Calendar No. 82

98TH CONGRESS
1st Session

SENATE

REPORT
No. 98-55

BANKRUPTCY COURT AND FEDERAL JUDGESHIP ACT OF 1983

REPORT

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

[To accompany S. 1013]

with

ADDITIONAL AND MINORITY VIEWS

APRIL 7 (legislative day, APRIL 5), 1983.—Ordered to be printed

---

U.S. GOVERNMENT PRINTING OFFICE

18-731 O

WASHINGTON : 1983

S523-2

COMMITTEE ON THE JUDICIARY

STROM THURMOND, South Carolina, *Chairman*

CHARLES McC. MATHIAS, JR., Maryland
PAUL LAXALT, Nevada
ORRIN G. HATCH, Utah
ROBERT DOLE, Kansas
ALAN K. SIMPSON, Wyoming
JOHN P. EAST, North Carolina
CHARLES E. GRASSLEY, Iowa
JEREMIAH DENTON, Alabama
ARLEN SPECTER, Pennsylvania

JOSEPH R. BIDEN, JR., Delaware
EDWARD M. KENNEDY, Massachusetts
ROBERT C. BYRD, West Virginia
HOWARD M. METZENBAUM, Ohio
DENNIS DECONCINI, Arizona
PATRICK J. LEAHY, Vermont
MAX BAUCUS, Montana
HOWELL HEFLIN, Alabama

VINTON DEVANE LIDE, *Chief Counsel and Staff Director*
DEBORAH K. OWEN, *General Counsel*
SHIRLEY J. FANNING, *Chief Clerk*
MARK H. GITENSTEIN, *Minority Chief Counsel*

CONTENTS

	Page
I. Introduction	1
II. Responsibilities of Bankruptcy Courts	3
III. History of Bankruptcy Laws	3
IV. The *Marathon* Decision	8
V. Legislative History of S. 1013	12
VI. Summary of S. 1013	15
VII. Legislative Alternatives	30
VIII. Constitutionality of S. 1013	32
IX. Section-by-Section Analysis	42
X. Estimated Costs	45
XI. Regulatory Impact Evaluation	47
XII. Changes in Existing Law	47
XIII. Conclusion	73
XIV. Appendix	74
Additional views	98
Minority views	99

98TH CONGRESS
1st Session

SENATE

REPORT
No. 98-55

BANKRUPTCY COURT AND FEDERAL JUDGESHIP ACT OF 1983

APRIL 7 (legislative day, APRIL 5), 1983.—Ordered to be printed

---

Mr. THURMOND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1013]

The Committee on the Judiciary, to which was referred the bills (S. 54, S. 443 and S. 792) to establish Bankruptcy Courts of the United States, having considered the same, reports favorably S. 1013, a new bill offered by Senator Thurmond and Senator Heflin, and recommends that the bill, as amended, do pass.

I. INTRODUCTION

On June 28, 1982, the United States Supreme Court in *Northern Pipeline Construction Co.* v. *Marathon Pipe Line Co.*,[1] in a plurality opinion, ruled that it was unconstitutional for Congress to have assigned the power to decide certain bankruptcy cases grounded in State law to Federal bankruptcy judges who did not have life tenure and the guarantee against reductions in salary contained in Article III of the United States Constitution. The Supreme Court stated that its decision was not retroactive and stayed the decision until October 4, 1982, to give Congress an opportunity to respond. When Congress did not act, the Supreme Court extended the stay until December 24, 1982. Congress again had not acted by the adjournment of the 97th Congress. The Supreme Court subsequently denied the Solicitor General's motion for a further stay upon the expiration of the December 24, 1982, stay. The final judgment of the Supreme Court was then issued overturning the system of bankruptcy judges established by the 1978 Act.

The bankruptcy courts have since operated under an interim rule proposed by the Judicial Conference of the United States and

[1] 102 S. Ct. 2858 (1982).

adopted by the Judicial Council for each circuit.[2] Under this rule, core bankruptcy cases are referred to, and generally decided by, bankruptcy courts (although they are subject to being withdrawn at the discretion of the district court and decided by the district court). All orders and judgments of the bankruptcy court become effective upon entry by the clerk, except at the discretion of the district court, or when they involve *Marathon* S type issues of State law and where the parties do not consent to judgment by the bankruptcy court. In these instances, the district court may review *de novo* findings of the bankruptcy court and enter an appropriate order or judgment. The constitutionality of the interim rule has been upheld by the Fifth Circuit in *Braniff Airways, Inc.* v. *CAB.*[3]

The Thurmond-Heflin bill represents a proposed permanent response to the *Marathon* case by the Committee on the Judiciary. It would continue the use of Article I bankruptcy courts as adjuncts to the Article III district courts, except that the jurisdiction and the authority of the bankruptcy courts would be subject to the control of the district court and the consent of the parties. Under this measure, core bankruptcy cases would continue to be decided by an Article I bankruptcy court while *Marathon*-type State law cases would be decided in such a forum only upon the consent of the parties.

In the absence of such consent, these cases must be "recalled" and decided by the district court. In addition, any case could be recalled to such a forum at the discretion of the district court, either on its own motion, or on that of the bankruptcy court or any party to litigation. In any recalled case, the district court could designate any bankruptcy judge in that district to serve either as a special master or magistrate to hear such cases; or could refer such cases to a regular United States magistrate.

The bill authorizes the appointment of 229 new Article I judges, representing approximately the number of existing permanent bankruptcy positions, with at least one full-time bankruptcy judge for each Federal judicial district. These judges would serve 14-year terms and be appointed by the President with the advice and consent of the Senate by April 1, 1984.

In addition, the bill authorizes the President to appoint, with the advice and consent of the Senate, 24 additional judges for the United States Court of Appeals and 51 additional judges for the United States District Courts. These new positions are created to meet the continuing case-load requirements of the Federal judiciary and are unrelated to changes in the bankruptcy system.

Finally, the bill provides for a retirement system for bankruptcy judges and modifies the existing retirement system for Article III district and circuit court judges.

While the *Marathon* decision is a confusing one to most observers (lacking any majority opinion), the Committee strongly believes that the present measure represents a sound legislative response, one that would deal with the immediate short-term needs of ensuring stability in the bankruptcy system as well as with the long-

---

[2] 28 U.S.C. 332(d) (1976).
[3] No. 83-1048 (5th Cir. Feb. 28, 1983).

term requirements of establishing an enduring, constitutional process for resolving bankruptcy disputes.

II. Responsibilities of Bankruptcy Courts

The central function of bankruptcy courts is to provide an equitable system for distribution of a debtor's assets to creditors in the event of bankruptcy. Bankruptcy proceedings can vary in form, depending on the nature of the debtor and upon the type of relief the debtor and his or her creditors seek.[4] Depending upon a number of factors, the debtor may petition for—or the court may order—either liquidation of the debtor's estate or the reorganization of the debtor's obligations with creditors reducing, rescheduling, or restructuring the debts.

A debtor, or in some cases creditors, may initiate a bankruptcy proceeding by filing with the bankruptcy court a petition seeking relief under the bankruptcy laws. Upon the filing of such a petition, the bankruptcy court assumes jurisdiction over the debtor's estate and, to some degree, over the debtor. The bankruptcy court's ordinary responsibilities upon the filing of a bankruptcy petition include staying lawsuits against the debtor, approving the assumption or rejection of any contracts the debtor has negotiated, arranging meetings of the creditors, and approving arrangements for the conduct of the debtor's affairs during the pendency of the bankruptcy proceedings. At the later stages of a proceeding, the bankruptcy court's responsibilities include adjudicating unlawful preferences and fraudulent conveyances, requiring creditors to file their claims against the debtor or be forever barred, and allowing or disallowing proofs of claim. In cases where the debtor's estate is to be liquidated, the bankruptcy court is responsible also for collecting the debtor's assets, adjudicating conflicting claims to the debtor's property, supervising the sale or disposition of the debtor's assets, and ordering the distribution of the debtor's assets *pro rata* to creditors of equal class. In cases where the debtor's capital structure simply is to be reorganized, the court is responsible for approving the debtor's plans for the operation of his business while bankruptcy proceedings continue and for approving the debtor's plan for the restructuring of his or her debts.

At the conclusion of a bankruptcy proceeding, the bankruptcy court is responsible for ordering payment to the creditors or for approving the restructuring of the debtor's debt. The bankruptcy court then issues a final order adjudicating the debtor a bankrupt and ordering a discharge of the bankrupt's debts. Thereafter, except for several narrow exceptions, all previous debts of the debtor are void and unenforceable.

III. History of Bankruptcy Laws

The United States Constitution states: "The Congress shall have power . . . to establish . . . uniform Laws on the subject of Bank-

---

[4] Various chapters of title 11 of the United States Code set forth the procedures and requirements for different bankruptcy proceedings. Liquidations are governed by Chapter 7; wage earner and small business rehabilitations are governed by Chapter 13; larger reorganizations are governed by Chapter 11; and special provisions for bankruptcies of municipalities are included in Chapter 9.

ruptcies throughout the United States".[5] Congress has since enacted five major bankruptcy acts pursuant to this authority.

In order to fully appreciate the evolution of jurisdiction of bankruptcy courts, it is best to divide Federal bankruptcy laws into two categories; (i) pre-Bankruptcy Act of 1898, and (ii) post-1898 Act. The legislation enacted during the pre-1898 period may be characterized as vesting broad subject matter jurisdiction over bankruptcy matters in the Federal courts with limited delegation of authority to judicial officers other than the Federal district judge. The Bankruptcy Act of 1898 and the legislation which followed, except for the Bankruptcy Reform Act of 1978, may be characterized as providing for limited subject matter jurisdiction of bankruptcy related matters in the Federal courts with broad delegation of authority to judicial officers (i.e., referees and bankruptcy judges) other than Federal district judges. The Bankruptcy Reform Act of 1978 may be viewed as a "hybrid" of the preceding bankruptcy trends, with broad subject matter jurisdiction of bankruptcy-related matters given to the Federal courts and broad delegation of authority given to judicial officers (i.e., bankruptcy judges) other than the Federal district judge.

The first bankruptcy statute enacted by Congress was the Bankruptcy Act of 1800,[6] which like the other pre-1898 bankruptcy measures was remedial legislation in direct response to an economic depression. Under this Act, the Federal district court was authorized to appoint "commissioners" to assist in the bankruptcy proceedings by performing such duties as conducting examinations of the bankrupt, determining the amount of claims held by creditors and making distributions.[7] Although there was no express grant of jurisdiction to Federal courts, it appears that these duties were performed under the immediate supervision of the Federal district judge. Suits "at law or in equity" commenced by the debtor prior to the bankruptcy case could be continued by the assignee of the bankrupt's property wherever such suits were pending, and suits "at law or in equity" or arising out of claims of the bankrupt could be commenced by the assignee wherever the bankrupt might have commenced such suits.[8] This Act was repealed in 1803 by Congress.[9]

Soon, however, the country was again in the grips of an economic downturn and Congress enacted the Bankruptcy Act of 1841,[10] which was substantially more sophisticated than its predecessor. This Act provided for voluntary or involuntary bankruptcy proceedings against individuals and permitted a discharge of an individual's debts if the requisite percentage of his creditors consented. It continued the office and functions of the commissioner,[11] but added a specific jurisdictional provision which gave the Federal district courts jurisdiction of both "matters and proceedings in bankruptcy" and "cases and controversies" or "suits in law or in

---

[5] U.S. Const. Art. I, Sec. 8, cl. 4.
[6] 2 Stat. 19.
[7] § 2 of the Bankruptcy Act of 1800.
[8] § 13 of the Bankruptcy Act of 1800.
[9] 2 Stat. 248.
[10] 5 Stat. 440.
[11] § 5 of the Bankruptcy Act of 1841.

equity" between the assignee and adverse third parties.[12] Jurisdiction over "matters and proceedings in bankruptcy" referred to the court's power to adjudicate matters relating to the administration of the debtor's estate and to its power to determine disputes between a bankruptcy representative and a third party as to the property in the "custody" of the court. This jurisdiction derived from the concept that, upon filing of the bankruptcy petition, all property in the possession of the debtor passed into the "custody" of the court and became subject to the court's power of administration. Examples of "matters and proceedings in bankruptcy" included the appointment of an assignee for the debtor's property, the resolution of questions regarding the allowance, disallowance, and priority of creditor claims, examination of the debtor, and questions involving the debtor's exemptions. This jurisdiction was exclusive.

The jurisdiction of the court over "cases and controversies" or "suits at law or in equity" referred to the court's power to hear suits brought by an assignee or other bankruptcy representatives against third parties concerning disputes over property not in the "custody" of the court. An example of such controversies were suits brought by an assignee against an adverse party to recover a preference or fraudulent transfer. Unlike the court's jurisdiction over proceedings in bankruptcy, the court's jurisdiction over "cases and controversies" was not exclusive but was generally concurrent with state courts. The Act of 1841 was subsequently repealed in 1843 by Congress.[13]

Twenty-four years later, during the depression following the Civil War, Congress enacted its third bankruptcy statute, the Bankruptcy Act of 1867.[14] Under this Act, the commissioners were succeeded by "registers" who appeared to have had no judicial power and who continued to perform many of the duties assigned to the commissioners by prior statutes. The jurisdictional provisions of the 1841 Act were retained in the 1867 Act.[15] Under the Acts of 1800, 1841, and 1867, the resolution of controversies and proceedings in bankruptcy of a non-administrative nature was left to the Federal district judge. The 1867 Act was repealed in 1878 by Congress.[16]

The Bankruptcy Act of 1898,[17] the first bankruptcy legislation not in response to a depression, was the longest lived of any of the previous Acts. This legislation and its subsequent amendments represent a complete reversal in the vesting of jurisdiction of bankruptcy matters from the pre-1898 statutes. The signals of this coming shift first came with the creation of the office of referee who was empowered to perform a wide range of bankruptcy duties, although their judicial role continued to be minor.[18] Such referees, appointed for two-year terms, were not salaried officers of the United States, but were paid on a commission or fee basis. Under this Act, the reference of a bankruptcy case to referees was not

[12] § 6 of the Bankruptcy Act of 1841.
[13] 5 Stat. 614.
[14] 14 Stat. 517.
[15] §§ 1, 2 of the Bankruptcy Act of 1867.
[16] 20 Stat. 99.
[17] 30 Stat. 44.
[18] § 33 of the Bankruptcy Act of 1898.

automatic; the referees' orders were not given the same finality as under later revisions of the 1898 Act; and review of the referees' decisions and orders by district judges was by "petition for review" rather than by appeal.

Referees originally were required to perform many purely ministerial functions. The referee was not conceived of as a judge or a judicial officer, but rather as an administrator of a bankruptcy case. When disagreements arose in the administration of a case, he would decide the case, subject always to review by the district court. The referees' jurisdiction, commonly referred to as "summary jurisdiction", was limited to those matters relating to property over which they had direct control, matters referred to them as "special masters" by judges, and matters submitted by consent of the parties. Most of the litigation that arose in bankruptcy cases was handled by the Federal district or State courts.

The 1898 Act limited the jurisdiction of the Federal district court as to "controversies". While retaining the exclusive jurisdiction of the Federal district court over proceedings in bankruptcy, it provided that controversies could only be brought by the trustee in a Federal district court if that court would have had jurisdiction of the action if a bankruptcy case had not been instituted.[19] In contrast to earlier Federal bankruptcy laws, the 1898 Act provided that, except for controversies seeking the recovery of transfers alleged to be fraudulent or preferential under Federal bankruptcy law or voidable under State law or other Federal law, a controversy could be heard in district court only if such controversy satisfied the traditional diversity or Federal question bases for Federal jurisdiction independently of the existence of the bankruptcy case. The fact that a controversy arose in the context of a bankruptcy case would not, in itself, transform the controversy into a matter arising under Federal law. The defendant could, however, consent to jurisdiction in a particular Federal district court to hear the lawsuit. In most instances, proceedings in bankruptcy were heard by the referee and controversies were heard by the Federal district court.

The 1898 Act was amended several times on a piecemeal basis and revised substantially by the Chandler Act of 1938.[20] With the Chandler Act (Bankruptcy Act of 1938), the position of referee began to evolve. The referee was transformed increasingly a judicial officer by removing many of his administrative duties and lodging them either in the trustee or the clerk.

In 1946, referees were removed from the fee system and made salaried officers of the district courts.[21] The fee system, which some suggested gave referees an incentive to decide disputes in favor of the estate, was repealed in view of the referee's expanded judicial and diminished administrative role. The terms of the referees were extended from 2 to 6 years.[22] Legislation in 1966 prohibited referees from acting as trustees or receivers in bankruptcy cases, which was regarded as inappropriate activity for a judicial officer.

---

[19] § 32, 23 of the Bankruptcy Act of 1898.
[20] 52 Stat. 840.
[21] 60 Stat. 323, 326-27.
[22] 60 Stat. 323, 324.

In 1973, on the recommendation of the Judicial Conference, the United States Supreme Court [23] issued the Rules of Bankruptcy Procedure which went further to recognize the judicial status of referees. Many of the administrative duties were removed from the referee and the office was referred to as "bankruptcy judge", in recognition of the judicial character and judicial nature of much of the work of the bankruptcy judge, and to provide a term broad enough to include district judges when presiding over bankruptcy proceedings.

Earlier, in 1968, the Senate Judiciary Committee had conducted hearings to determine whether to form a commission to review the bankruptcy laws of the United States.[24] Two years later, the Congress established the Commission on the Bankruptcy Laws of the United States to study, evaluate, and recommend changes in the substance and administration of the bankruptcy laws.[25] The Commission submitted its report to Congress in 1973,[26] which was introduced as a bill in both Houses of Congress later in the year.[27] No conclusive action, however, was taken.[28]

Extensive hearings [29] on bankruptcy bills [30] introduced in the 94th Congress resulted in the revised bills [31] introduced in the 95th Congress. Hearings [32] in the 95th Congress focused extensively on the operation of the referee system and alternative systems. It was decided that the establishment of a bankruptcy court which would decide bankruptcy cases in a single forum would be advantageous. There was then considerable debate in Congress as to whether these bankruptcy judges were to be Article III or Article I judges. The House bill,[33] adopted the Article III concept,[34] while the Senate bill,[35] gave the bankruptcy judges Article I status.[36] In the waning days of the 95th Congress, a compromise was negotiated conferring on the Article I bankruptcy courts unified jurisdiction, and giving the bankruptcy judges 14-year terms. The jurisdictional grant abandoned any distinction between proceedings in bankrupt-

---

[23] 415 U.S. 1003 (1973).

[24] Hearings on S.J. Res. 100 Before the Subcommittee on Bankruptcy of the Senate Comm. on the Judiciary, 90th Cong., 2d Sess. (1968).

[25] Act of July 24, 1970, Pub. L. No. 91-354, 84 Stat. 468.

[26] Report of the Commission on the Bankruptcy Laws of the United States, H.R. Doc. No. 137, 93d Cong., 1st Sess. (1973).

[27] S. 4026, 93d Cong., 1st Sess. (1973); H.R. 10792, 93d Cong., 1st Sess. (1973).

[28] Hearings on H.R. 10792 Before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary, 93d, 1st Sess. (1973).

[29] Hearings on H.R. 31 and H.R. 32 Before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary, 94th Congress., 1st and 2d Sess. (1975-1976); Hearings on S. 235 and 236 Before the Subcomm. on Improvements in Judicial Machinery of the Senate Comm. on the Judiciary, 94th Cong., 1st Sess. (1975).

[30] S. 235 and S. 236, 94th Cong., 1st Sess. (1975); H.R. 31 and H.R. 32, 94th Cong., 1st Sess. (1975).

[31] H.R. 6, 95th Cong., 1st Sess. (1977); S. 2266, 95th Cong., 2d Sess. (1977).

[32] Hearings on H.R. 8200 Before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary, 95th Cong., 1st Sess. (1977).

[33] H.R. 8200, 95th Cong., 1st Sess. (1977).

[34] *See* H.R. REP. No. 595, 95th Cong., 1st Sess. 19 (1977).

[35] S. 2266, 95th Cong., 2d Sess. (1977); *See* Hearings on S. 2266 Before the Subcomm. on Improvements in Judicial Machinery of the Senate Comm. on the Judiciary, 95th Cong., 1st Sess. (1977).

[36] *See* S. REP. No. 989, 95th Cong., 2d Sess. 2 (1978). Under the House bill, independent Article III bankruptcy courts were established, with supervision of the administration of cases entrusted to United States trustees monitored by the Department of Justice. The Senate version made the bankruptcy courts adjuncts of the United States District Courts and eliminated United States trustees. As part of the compromise, a pilot program of United States trustees was established in eighteen judicial districts.

cy and controversies, or between "summary" and "plenary" proceedings. Under the 1978 Bankruptcy Reform Act, the bankruptcy judge was given unpresedently broad jurisdiction to hear virtually all litigation in which the debtor or the estate could be expected to have any interest, however fundamentally grounded in issues of State law. On October 6, 1978, Congress passed the compromise version of the Bankruptcy Act of 1978, and the bill was signed into law by the President on November 6, 1978.[37]

On June 28, 1982, the United States Supreme Court in *Northern Pipeline Construction Co.,* v. *Marathon Pipe Line Co.,*[38] in a plurality opinion, ruled that the jurisdiction over certain State law claims granted the bankruptcy courts by the 1978 Act was unconstitutional.

IV. The *Marathon* Decision

In *Northern Pipeline Construction Co.* v. *Marathon Pipe Line Co.*,[38a] the Supreme Court ruled unconstitutional the Bankruptcy Act of 1978. Because there was no majority opinion in this decision, its scope is a matter of widespread disagreement. Justice Brennan, writing for the plurality of himself, Justices Marshall, Blackmun, and Stevens favored a broad ruling of unconstitutionality on the grounds that the Act delegated a broad range of Article III judicial responsibilities to non-Article III bankruptcy judges. A necessary concurring opinion, however, by Justice Rehnquist for himself and Justice O'Connor favored a more limited holding that nevertheless concurred in the judgement that the delegation of authority under section 241(a) of the Bankruptcy Act was unconstitutional. Dissenting opinions were written by the Chief Justice, and by Justice White for himself, the Chief Justice and Justice Powell.

PLURALITY OPINION

Justice Brennan's plurality opinion relied in roughly equal parts on the doctrine of separation of powers and the case law concerning Article III to reach the conclusion that section 241(a) of the Act, conferring broad subject-matter jurisdiction upon the bankruptcy courts, was unconstitutional. Relying on both sources of authority, Justice Brennan concluded early in his opinion that the Constitution "commands that the independence of the Judiciary be jealously guarded, and it provides clear institutional protections for that independence." [39]

The balance of the plurality opinion is devoted to rebutting arguments made by the United States and the appellants. The first of these arguments was that the Article I bankruptcy courts were properly legislative courts established by Congress to have jurisdiction over " 'specialized areas having particularized needs and warranting distinctive treatment.' " [40] The second argument was that the bankruptcy courts' jurisdiction was constitutional because the bankruptcy courts were created as adjuncts to the district courts

---

[37] Pub. L. No. 95-598, 92.
[38] 102 S.Ct. 2858 (1982).
[38a] *Id.*
[39] *Id.* at 2866.
[40] *Id.* at 2867, (quoting *Palmore* v. *United States,* 411 U.S. 389, 408 (1973)).

and because the orders of bankruptcy judges were subject to appeal to an Article III court.

Justice Brennan rejected the former argument on the grounds that the bankruptcy courts did not fit within the three narrow exceptions to Article III—territorial courts, courts martial, and courts adjudicating "public rights." Of these three exceptions, only that pertaining to adjudications of "public rights" was relevant. Citing the early decision in *Murray's Lessee* v. *Hoboken Land & Improvement Co.*,[41] Justice Brennan recognized the proposition that Congress may create new rights in the public against the Government and commit the determination of such rights to a legislative court or an administrative agency.[42] However, the plurality opinion found that the "public rights" doctrine applied only to matters that could be conclusively determined by either of the "political" branches—Congress or the Executive—and not to matters that were "inherently judicial." [43] The plurality recognized that there were parallels between the central function of a bankruptcy court—to grant debtors a discharge in bankruptcy—and such "public rights" as the allocation of radio frequencies and the granting of pilot licenses and certificates for common carriers. However, the plurality distinguished "the restructuring of debtor-creditor relations, which is at the core of the Federal bankruptcy power" from "the adjudication of state-created private rights, such as the right to recover contract damages that is at issue in this case." [44]

The plurality also rejected the argument that the bankruptcy courts were no more than adjuncts of the Article III courts and therefore proper under Article III. Examining precedents involving the use of administrative agencies and magistrates as adjuncts, Justice Brennan concluded that judicial adjuncts met the requirements of Article III only if Congress created the substantive Federal right adjudicated by the adjunct and if the functions of the adjunct were "limited in such a way that the 'essential attributes' of judicial power are retained in the Art. III courts." [45] The bankruptcy courts failed both tests. Unlike other adjuncts created by Congress, the bankruptcy courts adjudicated more than simply the substantive Federal rights created by Congress; they also adjudicated questions of constitutional and State law, such as the breach of contract claim at issue in *Marathon*. Moreover, the bankruptcy courts did not leave the "essential attributes" of judicial power in the Article III courts. Insufficient judicial control was reserved in these courts. Instead, the bankruptcy courts had sweeping bankruptcy and non-bankruptcy subject matter jurisdiction, jurisdiction coequal with that of the district courts, all the ordinary powers of district courts, enjoyed a higher standard of review upon appeal, and issued final judgments.[46]

The plurality declined to apply its holding retroactively, but instead decided to apply its decision prospectively from October 4,

---

[41] 18 How. 272 (1855).
[42] S. Ct. at 2869.
[43] *Id.* at 2870, (quoting Ex Parte Bakelite Corp. 279 U.S. 438, 458 (1929)).
[44] *Id.* at 2871.
[45] *Id.* at 2876. *See Crowell* v. *Benson*, 285 U.S. 22 (1932).
[46] *Id.* at 2878–79.

1982, to afford Congress the opportunity to reconstitute the bankruptcy courts in accordance with the Court's decision.

CONCURRING OPINION

Justice Rehnquist, joined by Justice O'Connor, wrote an opinion narrowly concurring in the judgment. Rejecting the sweeping language of the plurality opinion, the concurring opinion indicated instead that the Court should limit the scope of its decision to the narrow question presented by the breach of contract claim at issue in the *Marathon* case. Justice Rehnquist agreed with the plurality that the contract claim at issue was one properly to be adjudicated by an Article III court, and rejected the principal arguments made by the United States and the appellants.

The concurring opinion, however, did not accept the notion that there were only three narrowly delineated areas in which Congress could establish Article I courts, and instead focused on the fact that the defendant had not consented to suit before the Article I judge. They declined to decide the broad question of whether Congress grant of jurisdiction in section 241(a) to bankruptcy judges violated Article III of the Constitution since *Marathon Pipe Line* was not "subjected to the full range of authority granted bankruptcy courts by section 241(a)." [47] Justice Rehnquist preferred to limit his ruling to the precise claims of *Northern Pipeline* against *Marathon* which would have been tried before a State court or an Article III court in the absence of the bankruptcy proceeding.[48]

The concurring justices would, therefore, have held unconstitutional that portion only of the Bankruptcy Act of 1978 which empowered the bankruptcy court to decide, "against its will" claims against *Marathon* concerning matters "related" to bankruptcy proceedings. The concurring justices were able to join with the majority because they found that the portion of section 1471(a) of the Act granting bankruptcy judges the power to hear bankruptcy "related" matters was not severable from the general grant of authority.[49] As a result, they concurred in the judgment including that part of it which rejected retroactive application of the judgment in *Marathon*.

DISSENTING OPINION (CHIEF JUSTICE)

The Chief Justice wrote a dissenting opinion attempting to narrow the majority's holding. Claiming that the Court's holding was limited to the narrow proposition stated by Justice Rehnquist—that only traditional State common-law actions were beyond the constitutional jurisdiction of the bankruptcy courts—the Chief Justice argued that the decision did no more than preclude bankruptcy courts from adjudicating a relatively narrow category of claims "arising under or related to" cases under the Act.[50] The Chief Justice concluded that the Court's decision would not require a radical restructuring to the Act, but could rather be accommodated by Congress "simply by providing that ancillary common law ac-

---

[47] *Id.* at 2881, (Rehnquist, J., concurring).
[48] *Id.*
[49] *Id.* at 2882.
[50] *Id.* (Burger, C. J., dissenting).

tions, such as the one involved in this case, be routed to the United States district court of which the bankruptcy court is an adjunct." [51]

DISSENTING OPINION (JUSTICE WHITE)

In a long dissenting opinion joined by the Chief Justice and Justice Powell, Justice White rejected the reasoning of the plurality opinion and set forth an alternative analysis. Justice White argued that both before and since passage of the Act in 1978, bankruptcy referees and judges constantly had been enmeshed in deciding questions of State law as part of the discharge of their functions in bankruptcy cases. The broader jurisdiction which bankruptcy courts were granted by the Act was not the extension of Federal jurisdiction to State law claims for the first time, but rather the addition of State law claims against third parties. The real change in jurisdiction worked by the Act, therefore, was not the addition of State law claims, but instead the addition of *in personam* jurisdiction to the in rem jurisdiction bankruptcy referees exercised before 1978. Since no one would contend that the bankruptcy courts' pre-1978 jurisdiction was unconstitutional, Justice White argued, there was no basis for finding the bankruptcy courts' new *in personam* jurisdiction unconstitutional.

Justice White went on to point out that neither practice nor precedent clarified the matter. Historically, Article I courts had adjudicated claims based on private civil law that also could have been decided by Article III courts. Moreover, on appeal, Article III courts routinely review the decisions of Article I courts, even though in principle the judicial power of Article III courts should not extend to Article I issues. The Supreme Court's own precedents were equally confusing, at best standing for the tautology that Article III courts were those with Article III judges and Article I courts were those with Article I judges.

Justice White concluded that Article III "should be read as expressing one value that must be balanced against competing constitutional values and legislative responsibilities." [52] Factors to be considered in deciding the propriety of an Article I court should include the availability of appellate review by an Article III court and whether the Article I court was dealing with issues that would be of little interest to the political branches of government. In the present case, the ends Congress sought to accomplish in the Article I bankruptcy courts were as compelling as those found in any other Article I court, and adequate protections were afforded to Article III policies by the availability of appeal to Article III courts and by the fact that bankruptcies, as a general matter, were of little political significance. Therefore, the grant of jurisdiction to the bankruptcy courts under section 241(a) should be considered constitutional.

It is the Court's decision in the *Marathon* case that gives rise to S. 1013. The Committee believes that this measure represents an

---

[51] *Id.*
[52] *Id.* at 2893, (White, J., dissenting).

appropriate response to this decision to re-establishing a constitutionally sound system of bankruptcy administration.

V. Legislative History of S. 1013

Following the Supreme Court's June 28, 1982, decision in the *Marathon* case, the Committee held two days of hearings on July 22 and 23, 1982, to discuss the decision and to explore various legislative options available to the Congress. A number of witnesses testified at these hearings, including bankruptcy judges, bankruptcy practitioners, and law professors. There were also numerous written submissions for the record, including a statement by the American College of Trial Lawyers, a report by the Judicial Conference of the United States, and letters from various State bar associations.

Appearing at the July 22 hearing were Judge Dean Gandy, President of the National Conference of Bankruptcy Judges; Judge David Kline, United States Bankruptcy Judge from the Western District of Oklahoma; Judge Lloyd George, United States Bankruptcy Judge from Nevada; Judge Ralph Mabey, United States Bankruptcy Judge from Utah; Edward Creel, an attorney with the firm of Creel & Atwood, Dallas, Texas, and member, Business Bankruptcy Committee American Bar Assocation; Lawrence King, Chairman, Legislative Committee of the National Bankruptcy Conference; Joe Friend, President, Commercial Law League; Charles F. Vihon, Special Counsel, Commercial Law League; Andrew M. Di Pietro, Chairman, Bankruptcy Committee, Commercial Law League; and Michael Cook, an attorney with the firm of Skadden, Arps, Slate Meagher & Flom, New York, New York.

Appearing before the Committee on July 23 were former United States Senator Roman Hruska, with the firm of Kutak, Rock & Huie, Omaha, Nebraska; Professor Marvin Redish, Northwestern University School of Law; and Richard Levin, an attorney with the firm of Stuttman, Treister & Glatt, Los Angeles, California.

During the course of these hearings, several legislative alternatives were presented for the Committee's consideration. While a variety of options were suggested, the primary ones appeared to be the following:

—To reconstitute the bankruptcy courts as Article III courts;
—To retain the present jurisdictional system with necessary alterations to conform to the *Marathon* decision; and
—To return to the court system as it existed prior to the 1978 Bankruptcy Reform Act.

A number of witnesses, primarily bankruptcy judges and practitioners, favored an Article III solution to the jurisdictional issues raised in the *Marathon* case, arguing that this approach would resolve the constitutional issues involved with certainty and finality. Others, including Senator Hruska, the American College of Trial Lawyers, and the Judicial Conference argued in favor of alternatives to an Article III approach preferring a less radical restructuring of the existing system. In its written statement, for example, the American College of Trial Lawyers offered the following recommendations:

> The College suggests that section 241(a) of the Bankruptcy Reform Act of 1978 be amended to accomplish the following two objectives:
>
> (1) To grant bankruptcy judges the power to adjudicate all matters arising in or related to bankruptcy proceedings with respect to which an Article I court can constitutionally exercise jurisdiction.
>
> (2) To permit the district courts, in all other matters arising in or related to bankruptcy proceedings, to employ the bankruptcy judges as true adjuncts of the district courts.[53]

The Judicial Conference submitted for the hearing record a report suggesting a clarification of the jurisdictional provisions of the 1978 Bankruptcy Reform Act to meet the requirements of the *Marathon* case.

Following these hearings in July of 1982, the Committee spent several months evaluating and drafting various responses to the *Marathon* decision. Senator Dole, Chairman of the Courts Subcommittee, working with Congressman Caldwell Butler, a Republican Member of the House Judiciary Committee, developed during this time a proposal for creating a "Bankruptcy Division" in each Federal district, composed of Article III judges, who would adjudicate all bankruptcy and related matters. The Article III judges in such divisions would have been available to handle non-bankruptcy cases should their bankruptcy workload have permitted. On October 1, 1982, Congressman Butler introduced this legislation in the House as H.R. 7294 (later re-drafted as H.R. 7349).

Due to a variety of factors, including a lack of consensus on how best to resolve the *Marathon* issue, controversy over whether legislation should also address substantive bankruptcy reforms, and the press of other major legislative items on the Senate floor, no action was taken to restructure the bankruptcy courts during the 97th Congress. When the Supreme Court on December 24, 1982, refused to extend its stay of the *Marathon* decision, the bankruptcy system began the uncertain process of operating under an interim procedure proposed by the Judicial Conference.

At the beginning of the 98th Congress, the Committee promptly turned its attention to a number of bankruptcy issues, including those related to the *Marathon* decision. On January 24, 1983, the Subcommittee on Courts held a further hearing to receive testimony on the jurisdictional problems identified in *Marathon*, as well as on a variety of proposals for reform of substantive provisions of the Bankruptcy Code. Appearing before the Subcommittee to discuss legislative responses to the *Marathon* case were Jonathan Rose, Assistant Attorney General of the United States, U.S. Department of Justice; Judge Spencer Williams, United States District Court, Northern District of California; Judge Richard L. Merrick, United States Bankruptcy Court, Northern District of Illinois; and Edward Creel, an attorney with the firm of Creel & Atwood, Dallas, Texas.

---

[53] Hearings Before the Committee on the Judiciary, United States Senate, on the *Northern Pipeline* Bankruptcy Decision, 97th Congress, 2d Sess., July 22 and 23, 1982, Statement of American College of Trial Lawyers, at 226, 232.

Subsequent to the January 24 hearing, several bills addressing the *Marathon* issue were introduced in the Senate and referred to this Committee. The first of these measures was S. 54, the Bankruptcy Court Reform Act of 1983, introduced by Senator Arlen Specter. S. 54 provided for a system of specialized Article I and Article III judges to handle bankruptcy cases and related proceedings. It authorized the appointment of 229 Article I judges to process the bulk of bankruptcy matters, while authorizing 29 new Article III judges to be apportioned among the Federal circuits to handle those matters which *Marathon* required to be heard by an Article III judge.

Senator Dole introduced S. 443, the Bankruptcy Court Reorganization Act of 1983. This bill, providing an Article III solution to the issues raised in the *Marathon* case, was based on a December 1982 proposal of the Judicial Conference for merging bankruptcy cases into the district court system. S. 443 authorized the appointment of 165 new Article III district court judges, 114 of which were necessitated by the proposed merger of bankruptcy cases into the district courts. The remaining 51 positions were those contained in the 1980 and 1982 recommendations of the Judicial Conference to address the growing non-bankruptcy caseload of the Federal judiciary. The bill also authorized 24 new circuit court judgeships recommended by the Judicial Conference. To assist the district court judges in discharging their responsibility for handling all bankruptcy cases, S. 443 created the new position of bankruptcy administrator in most districts to ensure the effective and expeditious administration of bankruptcy cases.

A third measure was S. 792, the Bankruptcy Court Act of 1983. Introduced by Senator Howell Heflin, Ranking Minority Member of the Subcommittee on Courts, S. 792 provided for an Article I solution to the jurisdictional issues raised in the *Marathon* decision. Jurisdiction over cases under title 11 as well as jurisdiction over "subsidiary" and "related" proceedings, as defined in the bill, was vested in the district courts, with bankruptcy courts empowered to exercise such jurisdiction. The district court could, however, recall any case or proceeding at its discretion and was required to recall any *Marathon* case at the request of either party. The district court was also authorized to utilize magistrates and special masters to assist in handling recalled matters, as well as to utilize bankruptcy judges in either capacity. The Heflin bill was therefore similar to the original "jurisdictional clarification" proposal developed by the Judicial Conference, as well as to the interim rule pursuant to which district courts and bankruptcy courts had been operating since expiration of the Supreme Court's stay of its *Marathon* decision.

No Senate measure was introduced corresponding to H.R. 3, introduced by Congressman Peter Rodino, which would have established all 227 Article I bankruptcy judges as full Article III judges.

Prior to full Committee consideration of the pending bankruptcy court proposals on March 22, 1983, Chairman Strom Thurmond and Senator Heflin drafted a compromise proposal based in important respects upon S. 792. This proposal, the Bankruptcy Court and Federal Judgeship Act of 1983 reflected bipartisan concerns about an Article III solution to the problems in the bankruptcy system

given rise to by *Marathon*. Among the changes made in S. 792 were new Federal abstention provisions, clarification of the procedures for consent and recall, and a more limited definition of the scope of responsibilities of the bankruptcy judge serving as a magistrate. In addition, the Thurmond-Heflin proposal contained the 1980 and 1982 omnibus judgeship recommendations of the Judicial Conference, authorization for the appointment of 229 new Article I bankruptcy judges, and provisions relating to retirement of bankruptcy judges and of Federal judges.

The Thurmond-Heflin proposal was introduced as an original committee bill, S. 1013, at the March 22 meeting. Following the adoption of several technical amendments, and the rejection of an amendment offered by Senator East relating to habeas corpus procedures, the bill was overwhelmingly approved by the Committee by a vote of 15–1. The vote was as follows:

Aye	Nay
Thurmond	East
Laxalt	
Hatch	
Dole	
Simpson	
Grassley	
Denton	
Specter	
Biden	
Kennedy	
Byrd	
DeConcini	
Leahy	
Baucus	
Heflin	

In addition, a decision was made to schedule a hearing, prior to the time that the Committee bill was considered by the full Senate, to examine a proposal to authorize an additional nine district court judgeships to meet nonbankruptcy case-load needs.

VI. Summary of S. 1013

TITLE I

Title I of the bill implements an Article I solution to the issues raised in the Supreme Court's decision in the *Marathon* case. It repeals the jurisdictional provisions of the 1978 Bankruptcy Reform Act struck down by the *Marathon* decision and enacts a new Chapter 90 of title 28 of the United States Code redefining the jurisdiction of the district courts and of the bankruptcy courts. While attempting to fully address the constitutional issues raised in *Marathon*, the Committee has made an effort to retain much of the structure of the jurisdictional provisions of the 1978 Act and to retain the structure and substance of the venue provisions of the 1978 Act.

Title I of S. 1013 vests all jurisdiction over bankruptcy cases and proceedings in the district courts. More specifically, subsection

1471(a) grants original and exclusive jurisdiction to the district courts over all cases under title 11. Subsection 1471(b) vests original, but not exclusive, jurisdiction in district courts over all civil proceedings arising under title 11, or arising in or related to cases under title 11.

Bankruptcy courts would, however, be authorized to exercise the jurisdiction of the district courts specified in subsections 1471 (a) and (b), with bankruptcy cases automatically being referred to the bankruptcy courts. Bankruptcy courts would also be empowered under subsection 1471(i) to exercise jurisdiction over all the debtor's property, wherever located, as of the date of the commencement of a case under title 11—a provision identical to subsection 1471(e) of existing law. Thus, in terms of jurisdiction being vested in district courts, with bankruptcy courts designated to exercise such jurisdiction, S. 1013 implements a system similar in structure to that implemented by the 1978 Reform Act.

Unlike the 1978 Act, however, S. 1013 gives the district court far greater control over the handling of all bankruptcy cases and proceedings. Under section 1471(d), the district court judge may recall, on its own motion, any case or proceeding referred to the bankruptcy court. Also, a motion for recall of any case or proceeding may be made either by a bankruptcy judge or by a party. Recall by the district court is generally discretionary, except that recall is mandatory in two instances—(1) in any proceeding involving a claim or cause of action which is not one arising under title 11; and (2) in any proceeding where the district court determines that Federal laws regulating organizations or activities affecting interstate commerce are involved—the Committee intends that this second instance of mandatory recall be construed narrowly—basically to cover only those organizations or activities which immediately and directly affect interstate commerce.

This recall feature, a major departure from the system established in 1978, will permit a determination by an Article III judge of those matters addressed by the *Marathon* case, primarily as a result of the first mandatory recall category. The district court thus retains full power to withdraw or limit the reference of a bankruptcy case or proceeding to the bankruptcy court at any time for any reason, and is further *required* to recall any *Marathon* issue if requested to do so. A decision by the district court to recall a case or proceeding would be a non-reviewable decision.

It should also be noted that, while section 1471(c) authorizes the bankruptcy courts to exercise the jurisdiction given to the district courts, they may do so only to the extent that the exercise of such jurisdiction is consistent with the Constitution. In one sense, the inclusion of this language only serves to restate the obvious—that Congress cannot authorize a court to exercise jurisdiction which it cannot constitutionally exercise. The Committee, however, decided to include the words "except where inconsistent with the Constitution" to emphasize the continuing responsibility of both bankruptcy judges and district court judges to identify those proceedings which must be determined by an Article III judge and to assure that such proceedings are heard in the proper forum. Again, the recall provision of this bill provides a ready mechanism for assur-

ing that proceedings constitutionally required to be heard in an Article III forum are so heard.

A second major alteration which S. 1013 makes in the system enacted in 1978 is the greater control given to the parties themselves to determine the forum in which *Marathon*-type claims will be litigated. As explained above, recall by the district court is mandated in two instances specified in subsection 1471(e)(2). A party who wishes to have such a proceeding determined by an Article III judge may clearly have access to an Article III forum by simply moving for a recall by the district court. A party may, however, consent to a bankruptcy judge handling any of these proceedings and does so by not moving to have that proceeding recalled. More specifically, S. 1013 provides that consent by the parties shall be deemed to be granted unless a recall petition has timely been filed by a party. Such a petition must be filed by that party together with its first pleading and, pursuant to subsection 1471(e)(1), must contain a short and plain statement of the grounds for recall. The Committee believes this consent mechanism to be clearly constitutional and an appropriate way of eliciting objection by the parties to their case being heard by the bankruptcy court.

Once a case or proceeding has been recalled, subsection 1471(d) of the bill allows the district court to designate a bankruptcy judge to serve as a magistrate, exercising the powers which magistrates have pursuant to 28 U.S.C. § 636, or as a special master, pursuant to Rule 53 of the Federal Rules of Civil Procedure. The district court may also refer a case or proceeding to a United States Magistrate in accordance with the provisions of 28 U.S.C. § 636. A major concern raised regarding an Article I solution to *Marathon* issues has been the potential for delay while certain proceedings necessary to resolution of a case under title 11 are referred to a district court judge. It is the Committee's view that efficient use of all judicial resources, as provided for in subsection 1471(d), will effectively address that concern. It should also be kept in mind that the district court, should it decide to recall a particular proceeding, may in its discretion recall the entire case.

The applicable standard of review by the district court of the findings of bankruptcy judges as magistrates or as special masters, will be that provided for in existing law. In the case of a bankruptcy judge serving as a magistrate, applicability of section 636 would require a de novo determination by the district court of the issues involved in the case or proceeding. In the instance of a bankruptcy judge serving as a special master, Rule 53 specifies a "clearly erroneous" standard of review—a more deferential standard of review generally regarded as appropriate in light of the narrower and more specialized role of a special master. The Committee bill, however, allows a district court judge the flexibility to establish a different standard of review should he choose to do so in referring a particular case or proceeding.

Yet another significant change in the 1978 law—one which again operates to give parties greater authority over the forum in which their claims are to be litigated—may be found in the abstention provisions in subsection 1471(h). Abstention by Federal courts in the bankruptcy area is not a new concept. Subsection 1471(d) of existing law provides for a district court or a bankruptcy court, in the

"interest of justice," to abstain from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11. Current law further provides that such abstention, or a decision not to abstain, is not reviewable by appeal or otherwise. S. 1013 builds on this existing abstention provision but gives it greater effect by amending it to allow the district court to abstain, not only in the "interest of justice," but also in the "interest of comity with state courts and respect for state law." Along this same line, subsection 1471(d)(2) requires the court to abstain in the instance of a claim arising under State law in a related proceeding where a party has made a motion for abstention. Such abstention will be for the purpose only of allowing determiination of the application of the State's law to the claim or cause of action. These provisions address a concern of this Committee that the 1978 Act went too far in providing for Federal jurisdiction over claims based purely on state law which are only tangentially related to a case under title 11. While one obvious approach to addressing this concern is to remove Federal jurisdiction over such claims, the Committee chose to preserve the thrust of 1978 Act and to simply provide a mechanism for the parties to litigate these claims in state court should one of the parties so move.

In making the change in section 1471(h)(2), the following factors have influenced the thinking of the Committee:

(a) The Bankruptcy Act of 1978 significantly expanded the scope of Federal jurisdiction far beyond that which existed prior to the Act;[53a]

(b) As a result of this Act, Federal courts have been empowered to exercise jurisdiction over claims that are governed solely by state law;[53b]

(c) As a result of this Act, Federal courts have been empowered to exercise Federal jurisdiction in cases that do not arise under bankruptcy, and which are not based upon Federal diversity jurisdiction, not based upon the existence of Federal question jurisdiction, and not based in any proper sense upon Federal pendant jurisdiction;[53c] "they are outside of the" judicial power provided for in the Constitution;

(d) While the objective of consolidation of judicial proceedings within a single forum is a desirable one, this is not the overriding objective of the Nation's constitutional system of courts. Among competing values which have to be considered are the interests of

---

[53a] See, e.g., *Northern Pipeline* v. *Marathon Pipe Line*, 102 S. Ct. 2858, 2876 n.31; Note, Bankruptcy and the Limits of Federal Jurisdiction, 95 Harv. L. Rev. 703 (1982); 1 Collier on Bankruptcy 3.01(1)(3) at 3-49 to 3-49 (15th Ed. 1979) ("no conceptual limits" to Federal jurisdiction under 1978 Act.)

[53b] See, e.g. *Trim Cut Co.* v. *Beasley*, 4 Bankr. Rptr. 243, 2 C.B.C. 2d 117 (D. Del. 1980); *Family Savings and Loan* v. *Calabria*, 5 Bankr. Rptr. 73, 2 C.B.C. 2d 264 (D.Conn. 1980); *Griffith* v. *Realty Executives Inc.*, 2 C.B.C. 2d 387 (D.N.M. 1980); *Tidewell* v. *Thomas*, 2d 172 (N.D. Tex. 1980); *Cohen* v. *Beneficial Finance Co.*, 2 C.B.C. 2d 64 (M.D. Fla. 1980); *Thomas* v. *First State Bank*, 3 Bankr. Rptr. 312 (D.S.D. 1980); *Colgrove* v. *Hoopa Timber Co.*, 3 C.B.C. 2d 839 (N.D. Cal. 1981).

[53c] "The state and federal claims must derive from a common nucleus of operative fact. But if, considered without regard to their federal or state character, a plaintiff's claims are such that he would ordinarily be expected to try them all in one judicial proceeding, then, assuming the substantiality of the federal issues, there is power in the federal courts to hear the whole." *United Mine Workers* v. *Gibbs*, 383 U.S. 715, 725. This describes something totally different from a "related to" bankruptcy claim which may have nothing more in common with the underlying bankruptcy claim than an identity of parties.

judicial federalism and the interests of allowing state courts to decide matters of state law. The purpose of our constitutional institutions is not mere "efficiency", indeed many of these institutions are purposely slow and deliberate;

(e) Subject to well understood exceptions ("related to" jurisdiction not being one of them), the guiding principle in apportioning jurisdiction between Federal and State courts is that Federal courts interpret Federal law and state courts interpret state law;

(f) There is serious constitutional question about the ability of Congress to confer jurisdiction over purely state law matters upon Federal courts absent diversity or federal question jurisdiction; [53d]

(g) Even if judicial economy were the sole value of a system of bankruptcy courts, there is question whether the 1978 Act would be effective in achieving this. The volume of state law cases placed within the bankruptcy courts in so potentially great that it threatens to impede the ability of bankruptcy courts to expenditiously process core bankruptcy courts to expeditiously process core bankruptcy controversies; [53e] title 11 cases must have first claim on the bankruptcy court's resources if they are to be managed efficiently;

(h) The value of judicial economy is further undermined by a court system in which issues of state law are adjudicated, not by those who are experts in this law (i.e. state courts), but by Federal bankruptcy and district court judges who may be totally unfamiliar with it;

(i) In resolving purely state law matters, the Federal courts set no precedent for the resolution of future controversies of a similar character. The law which they create is applicable only to the individual parties in the litigation; it carries no precedential value within the state itself. Therefore, the Bankruptcy Act fosters the creation of two separate state laws—one for the individual parties before the bankruptcy court, the other for everyone else in the state; the administration of justice, in the broadest sense, will be made less efficient;

(j) It is unfair to require an individual engaged in a state law dispute, who is entitled to his day in state court and who wants to exercise such an opportunity, to have to submit to the exercise of jurisdiction by a Federal court where venue may be on the opposite side of the country.

(k) The proposed change in section 1471(h)(2) would not reverse entirely the direction of the 1978 Act but merely shift the balance slightly in the direction of increased respect for state courts and state laws.

In keeping with its policy of generally preserving the structure and substance of the 1978 Act, the Committee makes very few changes in current venue provisions. Sections 1472, 1473, 1474, and 1475 are virtually identical to corresponding sections of the 1978 Act, with the exception of providing for venue in the district courts rather than in the bankruptcy courts. It should also be noted that section 1475 regarding change of venue has been slightly modified

---

[53d] See, e.g. *Verlinden* v. *Central Bank of Nigeria* 647 F.2d. 420 (1981) cert. accepted, Docket #81-920.

[53e] See, e.g. Note, Selective Exercise of Jurisdiction in Bankruptcy Related Civil Proceedings, 59 Tex. L. Rev 325 (1981).

to provide for such a change "in the interest of justice *or* for the convenience of the parties." Present law uses the conjunctive "and," while the Committee bill lists these considerations as alternative grounds for a change of venue. It is the view of this Committee that, in light of the broad *in personam* jurisdiction which Federal courts possess in the bankruptcy area, largely as a result of the 1978 Act, district courts should always give careful consideration to the convenience of the parties in determining whether a change of venue is desirable.

Section 1476 of S. 1013 dealing with removal of bankruptcy cases, is essentially the same as section 1478 of existing law, except for reference to district courts rather than to bankruptcy courts.

Section 1477 of S. 1013 regarding jury trials is basically the same as section 1480 of existing law, except that the language of the section has been simplified. Certain other sections of the 1978 Act have been deleted entirely. These include section 1476 dealing with creation or alteration of districts or divisions, section 1477 dealing with cure of waiver of defects, section 1479 dealing with provisional remedies and security, section 1481 setting forth the powers of the bankruptcy courts, and section 1482 giving bankruptcy appellate panels jurisdiction over appeals from bankruptcy courts.

Sections 1476, 1477, and 1479 of the 1978 act were repetitive of other provisions of Federal law. With regard to the powers of bankruptcy judges set out in section 1481, the Committee felt it more appropriate, in light of concerns expressed in the *Marathon* case regarding the independent nature of the bankruptcy courts created in 1978, that the councils of each judicial circuit make necessary and appropriate orders and rules regarding the administration of cases in equity, law, and admiralty referred to the bankruptcy courts. Section 104 of the bill therefore amends section 332(d) of title 28 to authorize the circuit councils to issue such rules or orders, as well as any others that may be necessary for the effective and expeditious administration of bankruptcy cases and proceedings. Regarding the deletion of section 1482 authorizing appeals to bankruptcy appellate panels, it is the view of this Committee that providing for an appeal from a bankruptcy court decision to yet another body of Article I judges is inappropriate following the *Marathon* decision. The Committee believes that the district courts are the appropriate entities to review interlocutory and final judgments, orders, and decrees of the bankruptcy courts. Both of these changes obviously enhance the control of Article III courts over Article I bankruptcy courts, which are to serve as their adjuncts under the present bill.

Section 103 of S. 1013 adds a new section 145 or 162 to title 28 of the United States Code. This new section provides for promulgation by the district courts of local rules for the prompt determination of bankruptcy cases and proceedings, specifically including the establishment of a special bankruptcy calendar. Section 145 also authorizes, but does not require, the chief judge of each district court to designate one or more district court judges, a primary responsibility of whom will be to handle bankruptcy cases and proceedings. The provisions of section 145 should effectively address any concerns that bankruptcy matters will not receive at the district court level the prompt and careful attention which they require. This

Committee recognizes the crucial importance, both to individual debtors and to the economic well being of our Nation as a whole, of a properly functioning bankruptcy system. It anticipates that district court judges, as well as specialized bankruptcy judges, will make every effort to see that this system operates as efficiently and effectively as possible.

TITLE II

Title II of S. 1013 specifies the number and allocation of the Article I bankruptcy judges to be appointed pursuant to section 152 of the Bankruptcy Reform Act of 1978. That section of the 1978 Act provided that the President shall appoint, by and with the advice and consent of the Senate, bankruptcy judges for the several judicial districts. The 1978 Act did not specify, however, either the number of such judges to be appointed or the districts to which they would be assigned.

In his statement on the Senate floor regarding passage of the 1978 Act, Senator Dennis DeConcini, then Chairman of the Subcommittee on Improvements in Judicial Machinery, explained that the determination regarding the number of judges was to be made by Congress after a study was conducted during the five-year transition period "between the present system and a new court."[54] A study was subsequently conducted by the Judicial Conference of the United States, as required by section 406 of the 1978 Act, regarding the number and assignment of bankruptcy judges needed to implement the 1978 Reform Act. The conclusion of the Conference that 304 Article I bankruptcy positions would be needed was submitted to Congress on December 30, 1982.

There are currently 229 full-time and 12 part-time bankruptcy judges appointed by the district courts. The terms of these existing bankruptcy judges are due to expire on March 31, 1984, when the transition period provided for in the 1978 Act comes to a close. The Committee therefore felt it both necessary and appropriate that Congress finish the task it reserved for itself in the Bankruptcy Reform Act by specifically setting the number of judges to be appointed and by providing for their assignment to the various judicial districts.

This bill consequently authorizes the appointment of 229 new Article I bankruptcy judges, basically allocated as they are under the current system. While the Committee gave careful consideration to the higher number of bankruptcy judgeships recommended by the Judicial Conference, it was thought best to authorize the lower number based on the existing system until such factors as the national economy and the allocation of the bankruptcy workload between Article I and Article III judges stabilize. The following chart summarizes the changes between the current allocation of judges and that provided for in the Committee's bill.

[Chart follows:]

---

[54] Statement by the Honorable Dennis DeConcini, Chairman of the Subcommittee on Improvements in Judicial Machinery of the Senate Committee on the Judiciary, upon introducing the Senate Amendment to the House Amendment to H.R. 8200, October 6, 1978, 124 Cong. Rec. S. 17406.

BANKRUPTCY JUDGESHIPS

Circuit and District	Presently Authorized	Provided in Senate Bill
Total	279 + 12 P/T	229
District of Columbia	1	1
First Circuit	8 + 1 P/T	10
Maine	2	2
Massachusetts	4	4
New Hampshire	1 P/T	1
Rhode Island	1	1
Puerto Rico	2	2
Second Circuit	21	21
Connecticut	2	2
New York, Northern	2	2
New York, Eastern	6	6
New York, Southern	7	7
New York, Western	3	3
Vermont	1	1
Third Circuit	14 + 1 P/T	14
Delaware	1	1
New Jersey	5	5
Pennsylvania, Eastern	3	3
Pennsylvania, Middle	2	2
Pennsylvania, Western	3	3
Virgin Islands	1 P/T	-
Fourth Circuit	16	15
Maryland	2	2
North Carolina, Eastern	2	2
North Carolina, Middle	2	2
North Carolina, Western	1	1
South Carolina	1	1
Virginia, Eastern	3	3
Virginia, Western	3	2
West Virginia, Northern	1	1
West Virginia, Southern	1	1
Fifth Circuit	17 + 1 P/T	17
Louisiana, Eastern	2	2
Louisiana, Middle	1 P/T	1
Louisiana, Western	2	2
Mississippi, Northern	1	1
Mississippi, Southern	2	2
Texas, Northern	4	3
Texas, Eastern	1	1
Texas, Southern	3	3
Texas, Western	2	2
Sixth Circuit	31 + 2 P/T	30
Kentucky, Eastern	1	1
Kentucky, Western	2	2
Michigan, Eastern	4 + 1 P/T	4
Michigan, Western	2 + 1 P/T	2
Ohio, Northern	8	8
Ohio, Southern	7	7
Tennessee, Eastern	2	2
Tennessee, Middle	2	2
Tennessee, Western	3	2

Circuit and District	Presently Authorized	Provided in Senate Bill
Seventh Circuit	22 + 1 P/T	22
Illinois, Northern	8	8
Illinois, Central	2 + 1 P/T	2
Illinois, Southern	1	1
Indiana, Northern	2	2
Indiana, Southern	4	4
Wisconsin, Eastern	3	3
Wisconsin, Western	2	2
Eighth Circuit	17 + 1 P/T	17
Arkansas, Eastern	2	1
Arkansas, Western	-	1
Iowa, Northern	1	1
Iowa, Southern	1	1
Minnesota	4 + 1 P/T	4
Missouri, Eastern	3	3
Missouri, Western	3	3
Nebraska	1	1
North Dakota	1	1
South Dakota	1	1
Ninth Circuit	44 + 3 P/T	45
Alaska	1	1
Arizona	4	4
California, Northern	7	7
California, Eastern	4	4
California, Central	12	12
California, Southern	3	3
Hawaii	1	1
Idaho	1	1
Montana	2 P/T	1
Nevada	2	2
Oregon	4 + 1 P/T	4
Washington, Eastern	1	1
Washington, Western	4	4
Guam	-	-
No. Mariana Isl.	-	-
Tenth Circuit	15 + 2 P/T	15
Colorado	4	4
Kansas	3	3
New Mexico	2	1
Oklahoma, Northern	1 + 1 P/T	1
Oklahoma, Eastern	1 P/T	1
Oklahoma, Western	2	2
Utah	2	2
Wyoming	1	1
Eleventh Circuit	22	22
Alabama, Northern	5	5
Alabama, Middle	2	2
Alabama, Southern	2	2
Florida, Northern	1	1
Florida, Middle	2	2
Florida, Southern	3	3
Georgia, Northern	4	4
Georgia, Middle	2	2
Georgia, Southern	1	1

As can readily be seen, the major differences occur with regard to the treatment of part-time positions. The general rule which the Committee followed regarding such positions was to convert the part-time judge to a full-time judge if a particular district was served by only a part-time judge. If a district had one or more full-time judges and a part-time judge, the part-time position was abolished.

With the exception of provisions contained in Title IV establishing a new retirement system for bankruptcy judges and clarifying the terms of existing judges, the Committee bill does not alter provisions of the 1978 Act regarding bankruptcy judges. As provided for in existing law, the judges will serve 14-year terms and may be removed by the judicial council of the circuit in which they serve for incompetency, misconduct, neglect of duty, or physical or mental disability. They will continue to receive their current salary of $63,600.

TITLE III

Title III of the bill authorizes additional Article III judicial positions for the district courts and courts of appeals of the United States. The 51 district court judgeships and 24 circuit court judgeships authorized are based on the 1980 and 1982 recommendations of the Judicial Conference for new judges needed to meet the manpower needs of the Federal judicial system.[55]

Under section 331 of Title 28, the Judicial Conference is required to "make a comprehensive survey of the condition of business in the Federal courts of the United States." This same section also requires the Chief Justice of the United States, who serves as the Presiding Officer of the Conference, to "submit to Congress an annual report of the proceedings of the Judicial Conference and its recommendations for legislation." Pursuant to this statutory authorization, the Conference currently conducts a biennial survey of the workload of the Federal courts and corresponding manpower needs. Following formal approval by the Conference, recommendations for new judgeships are submitted to the Congress.

Each district court and circuit court position recommended by the Conference is based on an extensive analysis of a number of factors. The Conference, for example, evaluates both "objective" factors, such as statistical information regarding numbers of cases filed and terminated, and "subjective" factors, such as the types of cases or appeals often filed in a particular district or circuit and the demographic characteristics of a given district. In this evaluation the Conference utilizes "weighted" filings in excess of 400 as a threshold indicator of the need for additional judicial manpower

[55] The Judicial Conference today consists of the Chief Justice, who is the Presiding Officer, the chief judges of the eleven courts of appeals of the judicial circuits, the Chief Judge of the Court of Claims, the Chief Judge of the Court of Customs and Patent Appeals, and eleven district court judges, each of whom is chosen by his district court colleagues within each judicial circuit to serve a three-year term as a member of the Conference. That panel of twenty-five judges is the highest administrative and policy formulating unit within the judicial branch. In practice, the Conference usually meets in formal "Proceedings" twice each year. Printed reports of business conducted at each "Proceeding" are routinely filed with Congress as printed. The reports for each calendar year are also incorporated in a single volume "Annual Report of the Director of the Administrative Office of the United States Courts" and routinely filed with Congress and the Judiciary Committees of both Houses.

within a district. With regard to circuit court positions, demographic considerations and procedural processes vary more from court to court. The Conference therefore gives more weight in its consideration to such factors than it gives to any statistical "bright line" in evaluating need.

The 1980 and 1982 recommendations of the Conference reflect three basic policy decisions, which the Conference adopted in response to views expressed by Members of the House and Senate Judiciary Committees. First, no recommended position is based on a "projection methodology" for forecasting judgeship needs. While such a methodology could probably be developed to eliminate the lag time between submission of recommendations and final action by Congress, both the Conference and the Committee decided that at this time judgeships should only be created on the basis of demonstrated current need and not on the basis of projected future need.

Second, no permanent positions are recommended due only to backlog. Where a court has a significant backlog but has not experienced a large enough regular increase in case filings to clearly warrant an additional permanent position, the Conference has recommended the creation of "temporary" positions. These temporary positions would exist for a minimum of 5 years, but would terminate upon the first vacancy arising 5 years after the date upon which the temporary position was created.

A final policy followed by the Conference is to recommend only those positions which are demonstrably necessary at the current time. While individual circuit and district courts have requested larger numbers of judgeships, the Conference has attempted to hold its recommendations to the minimum necessary to avoid serious caseload congestion in individual courts.

The 1980 recommendation of the Judicial Conference was submitted in legislative form to Congress on March 5, 1981. This recommendation was developed during the 1979 biennial survey, the results of which were formally approved by the Conference at its September 1980 Proceedings. The proposed legislation, authorized a total of 43 additional district court and circuit court judgeships—14 circuit court positions and 29 district court positions. On April 24, 1981, the Subcommittee on Courts, to which this legislation was referred, held a hearing at which testimony was received from the chief judges, or their representatives, of all the circuits. Elaborate statistical exhibits prepared by the Administrative Office of the United States Courts were received and studied. In addition, testimony was received from J. Butzner, Jr., United States Circuit Court Judge, Fourth Circuit, and Mr. David Cook, assistant chief, Statistical Analysis and Reports Division, Administrative Office of the United States Courts.

On May 21, 1981, the Subcommittee on Courts voted to favorably report to the Full Committee an original Subcommittee bill, the provisions of which were substantially the same as those of the bill recommended by the Judicial Conference.[56] On September 21,

---

[56] The Subcommittee added one temporary judgeship for the Southern District of Florida, and one permanent judgeship for the District of Wyoming. Though not originally included in the

Continued

1982, the bill was ordered favorably reported by the Full Committee, by voice vote, without amendment. No further action was taken on this legislation during the 97th Congress.

The 1982 recommendation of the Conference was submitted to Congress on September 28, 1982, following approval by the Conference at its September 1982 proceedings. That recommendation, which included the 1980 figures with respect to which Congress had not taken action, called for the creation of 22 new judges for the courts of appeals, 43 new judges for district courts, 8 temporary district court judgeships, and the conversion of 2 existing temporary circuit judgeships to permanent positions. Detailed justification for each of these positions was submitted to the Committee, at the request of Chairman Thurmond, by letter from the Conference dated September 28, 1982. This information was published in the hearing record of the September 24, 1982, hearing held by the Subcommittee on Courts on legislation for the improvement of the Judiciary. William J. Weller, Legislative Affairs Officer, Administrative Office of United States Courts, appeared at the hearing and testified as to the results of the September 1982 proceedings of the Conference.

Title III authorizes only those judgeships recommended by the Conference in 1980 and 1982. No additional Article III judgeships are authorized by the Committee to handle those bankruptcy matters which, under *Marathon*, would require the attention of an Article III judge. While experience under the interim rule suggests that the percentage of bankruptcy matters necessitating action by district judges will be very low, it is reasonable to assume some moderate increase in the workload of the district courts, both as a result of their handling certain recalled proceedings and of their functioning as an appellate court for other bankruptcy cases and proceedings.[57] The Committee, however, following the policy of creating new judgeships only when they are demonstrably necessary at the present time, declined to authorize additional Article III positions until further experience under the interim rule or the juris-

---

Judicial Conference's recommendations, the Subcommittee found that the need for both these judgeships met the same criteria used by the Conference in formulating its original recommendations. S. 1013 follows the 1980 and 1982 recommendations of the Judicial Conference, which provides for 3 new permanent positions in the Southern District of Florida and one new permanent position in Wyoming.

[57] A significant amount of information has been brought to the attention of the Committee indicating that the percentage of proceedings being recalled to the district courts under the interim rule is indeed very low. For example, in testimony before the Subcommittee on Courts on March 11, 1983, Judge J. Clifford Wallace, United States Court of Appeals for the Ninth Circuit, stated that, in the Central District of California, less than one percent of bankruptcy filings had been referred to Article III judges and that that experience was representative of other districts within the Ninth Circuit. Statistics prepared by the Office of Staff Attorneys for the Ninth Circuit indicate that, for the months of January and February 1983, approximately one percent of the total judicial business concluded by Bankruptcy Judges required district court review. Approximately 6 percent of matters contested in the bankruptcy courts required district court review. In the Southern District of New York, Chief Judge Constance Baker Motley reported, by letter to Chairman Thurmond dated March 24, 1983, that of the 8,140 bankruptcy matters currently pending (which included 1,089 new matters filed between December 25, 1982, and March 23, 1983), only 57 matters had been referred to an Article III judge. Of those 57 matters referred, 28 required simply the issuance of an Order by the district court judge. Six of the referred matters required trials on issues related to pending bankruptcy matters. Other districts, such as the Southern District of Indiana, the Northern District of Texas, the Northern District of Alabama, the Western District of Washington, and the District of South Carolina, have in conversations with Committee Members and staff reported similar experience under the interim rule.

dictional framework implemented by Title I of this bill can be properly assessed.

The Committee has chosen to adopt the 1980 and 1982 recommendations of the Judicial Conference because such recommendations are based on a careful analysis of a variety of factors regarding the need for such judicial positions. The Committee believes that authorization of new judgeships based on such objective analyses, is the fairest method of allocating judicial positions among the various districts and is the best way to avoid a situation in which political considerations may predominate.

Attached as an Appendix to this report are justification sheets, prepared by the Conference, for each recommended position approved by the Committee.

TITLE IV

Title IV of the bill contains a number of administrative and technical amendments. The major provisons of this title deal with retirement of Federal judges, the establishment of a retirement system for bankruptcy judges, and life insurance policies for Federal judges.

With regard to retirement of Federal judges, the bill amends section 371 of title 28 of the United States Code to provide statutory authorization for a more comprehensive and rational spectrum of age and years-of-service criteria than exists at present, a change which has had the long-standing and consistent support of the Judicial Conference. Under the new section 371 set forth in section 401 of S. 1013, a judge will be allowed to either fully retire or retire on senior status between the ages of 65 and 70 as long as his age and years of service equal 80. Under existing law, for example, a judge with 13 years of service at age 67 may wish to retire, but cannot do so because he would be 2 years short of service years and 3 years short of the statutorily required age. Under this bill, such a judge who wishes to retire would be afforded that flexibility. The new age and service requirements are as follows:

Attained age:	*Years of service*
65	15
66	14
67	13
68	12
69	11
70	10

Currently, under section 371 of title 28 a judge appointed to serve for life during good behavior (pursuant to Article III of the Constitution) may elect to "resign on salary" under subsection (a) of section 371 after attaining age 70 and ten years of judicial service. If a judge chooses to so elect, he or she will receive "the salary which he or she was receiving when he or she resigned." In other words, no future salary increase shall be applicable to that judge's retirement salary. Under subsection (b) of section 371 a judge may elect to "retire in senior status" after either attaining age 70 and ten years of judicial service or attaining age 65 and fifteen years of judicial service. If a judge chooses that election, he or she will receive "the salary of the office" until death, and must remain avail-

able to perform judicial services. There is, of course, the third option, although not provided for by statute, of "absolute resignation"—the total abdication of the office and any retirement salary at any age.

Aside from revising the age and service criteria for retirement, the bill also clarifies that the "resignation" provided for under existing section 371(a) is in fact a form of retirement. Use of the terms "resignation" and "retirement" have, in the past, generated confusion. Section 371 is therefore revised to clarify that there are two distinct types of retirement—"retirement on salary," in which the judge receives an annuity equal to the salary he was receiving at the time he retired, and "retirement in senior status", in which the judge remains available to provide judicial service and is entitled to increases in the salary of the office while in senior status. The new age and service requirements apply to both types of retirement.

Congress devised the concept of senior status retirement in 1954 when it last amended section 371. The purpose of this type of retirement was to encourage older judges to remain available to provide valuable judicial service. Congress objective in 1954 has clearly been achieved. In October of 1980, in testimony before the Commission on Executive, Legislative and Judicial Salaries, the judiciary reported that, of the 251 Federal judges then eligible for "retirement" or actually retired, only 24 were not performing judicial services—and 19 of the 24 were retired under the disability retirement provisions in 28 U.S.C. § 372. Sixty-four "eligible" judges were still "in regular active service," and 163 were rendering services "in senior status." Only five of the 251 were "retired" under the provisions of subsection (a).

The disparity between age and service requirements for the two types of retirement has, however, had one unintended negative effect. Because it is available at an earlier age (although requiring a longer record of service), individual judges who have elected it may have done so, not because they genuinely wished to continue rendering service, but because they did not wish to wait until age 70 to retire. While the vast majority of judges taking senior status have contributed significant services, a few have not done so. Those few instances might be obviated were the age and service requirements the same for retirement under section 371(a) or 371(b). A judge who did not genuinely wish to continue serving would not be tempted to elect senior status simply because he or she believes that is the only way to "lighten the load" for the number of years remaining until age 70 is attained.

The Committee does not believe that this change will significantly affect the numbers of judges choosing full retirement as opposed to retirement on senior status. There remains the incentive of continued salary increases if a judge chooses to retire on senior status and continues to perform judicial services.

Title IV of the bill also establishes a retirement system for bankruptcy judges, both for those who are currently serving in that capacity and for the new judges appointed by the President for 14-year terms. Based on the retirement system for Members of Congress, this system would provide for a bankruptcy judge to receive retirement pay at a rate equal to 2.5 percent of his average pay

times his years of service, with the limitation that such retirement pay not exceed 80 percent of the salary payable to such judge on September 30, 1984. An existing or "transition" bankruptcy will be eligible to receive such pay after attaining the age of 60, if he has served as a bankruptcy judge for at least 8 years, and if he has continued in service until April 1, 1984, or until his successor is appointed, whichever is earlier. The Committee intends that years of service as a bankruptcy referee and judge prior to passage of the 1978 Act be counted toward the 8 years of service necessary for retirement benefits to vest. A newly-appointed bankruptcy judge will be eligible for such retirement pay, upon attaining the age of 60, if he has served as a bankruptcy judge for at least 8 years.

The bill also provides for retirement of a bankruptcy judge who becomes permanently disabled from performing the duties of the office. A disabled bankruptcy judge, if he has served not less than 8 years, will receive retirement pay equal to the salary which he was receiving when he retired because of his disability, with the limitation that such retirement pay not exceed 80 percent of the salary payable to such judge on September 30, 1984. A disabled bankruptcy judge who retires after having served less than 8 years will be entitled to receive 50 percent of salary he was receiving at the time he retired, again with the same limitation described above.

Existing bankruptcy judges are now covered by the civil service retirement system, under which they accumulate retirement pay at the rate of 1½ percent of salary for the first 5 years, 1¾ percent for years 6 through 10, and 2 percent for all years of service over 10. There is no retirement system under existing law for the new bankruptcy judges who are to be appointed by the President. While the appointment of such judges was authorized by the 1978 Act, that law did not address the issue of retirement. It is the view of this Committee that, in light of the fact that new bankruptcy judges will be presidential appointees, the retirement system for such judges should reflect that change in status. Therefore, a new retirement system, patterned after that of Members of Congress, was established for these judges rather than to provide for their coverage under civil service retirement. With regard to existing bankruptcy judges, the Committee felt it appropriate to provide improved retirement benefits for such judges because the 1978 Act terminated their services as of April 1, 1984, and because such benefits would serve as incentive for existing judges to remain on the bench until their successors are appointed. Such continuity, prior to the appointment of the new Article I judges, is extremely important to the efficient functioning of our Nation's bankruptcy laws.

A bankruptcy judge, either currently serving or newly appointed, is not required to participate in this retirement system. He must, in fact, affirmatively elect to participate in the system and does so by filing a notice of such election in writing with the Director of the Administrative Office of the United States Courts. A bankruptcy judge may also revoke such election at any time prior to the first day on which such retirement would have begun to accrue. Following such revocation, a judge will only be allowed credit toward civil service retirement for his years of service as a bank-

ruptcy judge if he deposits the requisite funds in the Civil Service Retirement and Disability Fund.

Title IV also makes certain changes in provisions of Title 5 of the United States Code relating to insurance policies held by Federal judges. The first change is a series of amendments to sections 8701(a), 8714a(c), and 8714b(c) of Title 5 dealing with the Federal Employees' Group Life Insurance Program. It would permit a judge who chooses to retire or to resign completely to convert all of his Federal employee group life insurance coverage—both "basic" and "optional"—to an individual life insurance policy in the private sector if he is willing to pay the necessary premium costs of the conversion. Today judges who retire are not permitted to convert optional insurance coverage at all. The Committee believes that they should be permitted to do so as long as the expense is borne by them as individuals and not by the taxpayers. That equity is especially relevant because this group of government employees may not elect retirement until attaining the age of 65, whereas all other government employees may elect retirement at age 55. The cost of purchasing insurance coverage at age 65 is substantially higher. In addition, a retiree's state of health may preclude eligibility to purchase a new policy. The cost of converted insurance will realistically reflect a purchaser's age at the time of the conversion but is generally less expensive than the purchase of a new policy. As long as the employee is willing to pay for the cost of continued coverage, the Committee believes that this conversion option should be available.

The second change is an amendment to section 8706 of title 5 entitled "Termination of Insurance." This amendment would enable judges to make an irrevocable assignment of all incidents of ownership in their Federal employees' group life insurance policies.[58] Such policies are not currently assignable to spouses or other family members. Consequently, they are not as valuable as non-government policies which ordinarily are assignable, enabling the insured to place the proceeds of the policy outside his or her estate in the event of death. It is the view of this Committee that allowing irrevocable assignability of government life insurance policies would greatly assist insured Federal judges by giving government policies the same attributes as policies purchased from non-government sources. It should also be of benefit to the Federal Government in terms of attracting well-qualified individuals. This change will not apply to policies purchased prior to the date of enactment of this Act unless the company which issues such policy agrees to such a change.

Another provision of Title I which should be noted is section 413 which extends by a maximum of 6 months the time allowed for appointment of new bankruptcy judges. Current law, under section 404(b) of the 1978 Act, provides for the terms of bankruptcy judges

---

[58] The Committee bill, as originally drafted, allowed other Federal employees, as well as Federal judges, to make an irrevocable assignment of the incidents of ownership of their Federal employees' group life insurance policies. Senator Thurmond, on behalf of Senator Kennedy, offered an amendment at Full Committee Markup which effectively limited the option to Federal judges. The Committee accepted the amendment, believing such a limitation to be entirely appropriate in light of the jurisdictional interests of other Committees in legislation affecting all Federal employees.

to expire at the close of the transition period on March 31, 1984, or when their successor takes office. This language is somewhat ambiguous as to whether existing judges may be continued past March 31, 1984. The Committee felt it necessary to clarify the length of the terms of current judges. The Committee bill therefore amends section 404(b) to provide for these judges to serve until March 31, 1984, or until their successor is appointed, whichever is later, but not later than October 1, 1984.

VII. Legislative Alternatives

In considering an appropriate legislative response to the Supreme Court's decision in *Marathon*, the Committee on the Judiciary considered a number of alternative approaches to that finally reported. In particular, a great amount of the Committee's effort was devoted to examining the efficacy of so-called Article III responses, all of which had in common the creation of new judges under Article III of the Constitution as a means of addressing the difficulties in the bankruptcy court system raised by *Marathon*. Such judges, unlike the Article I bankruptcy judges proposed in the instant bill, would be guaranteed lifetime tenure as well as protection against any future diminution of salary.

Among the principal Article III alternatives considered by the Committee were those which would have taken the following approaches: (a) creation of 189 new district and circuit court judgeships, with identical responsibilities as existing judgeships, to enable the Federal judiciary to administer the increased bankruptcy workload; (b) creation of 227 new Article III bankruptcy judgeships to handle bankruptcy cases; and (c) creation of 108 new district court judgeships to be accorded primary responsibility over the increased bankruptcy caseload of the Federal courts. Each of these proposals would have abolished the present system of Article I bankruptcy judges.

While individual Members of this Committee have been supportive of the Article III approach a substantial majority have had serious concerns about this approach. Among the principal concerns which have been expressed have been the following:

Delayed implementation.—Unlike S. 1013, which builds upon the present bankruptcy system, the Article III approaches would be characterized by long delays associated with the confirmation of new Article III Federal judges. Until this process was completed, the bankruptcy system would continue to operate under the present uncertain system of an interim rule. In the event that the confirmation process was extended in time, perhaps because of the inevitable partisan concerns that arise during Presidential election years, the uncertainty of the interim bankruptcy system would also be extended. A major advantage of the proposal adopted by the Committee is that it allows for immediate implementation and minimizes any period of uncertainty.

Number of judges.—Perhaps the most frequently expressed concern with the Article III approach was that it tended to result in increases in the size of the permanent size of the Federal judiciary far in excess of what was thought desirable by many Members. Under the approach in S. 1013, no new Article III judges are cre-

ated in response to the *Marathon* case. Those new Federal judicial positions created in Title III of the bill are based on the recommendations of the Judicial Conference reflecting the increased non-bankruptcy caseload burdens upon the judiciary; they are not related to the bankruptcy issue.

Under the Article III approaches, there would have been the need for large numbers of new Article III judges who would have been entitled to the benefits to which such judges are entitled under the Constitution (lifetime tenure, nondiminution of salary). Estimates ranged as high as 189 for the number of new Federal judges required, an increase of approximately forty percent in the total size of the Federal judiciary. In the view of a number of Members, an increase of this magnitude was simply out of proportion with the magnitude of the bankruptcy court problem. Considered in conjunction with the recent increases in the size of the Federal judiciary stemming from the Omnibus Judgeship Act of 1978, this would have represented a seventy percent increase in the size of the Federal judiciary in the past 5 years alone.

Reduced flexibility.—Because of the permanent character of Article III judges, and the guarantee of lifetime tenure to which they are constitutionally entitled, some Members of the committee felt that an Article III solution to *Marathon* would have restricted the ability of future Congresses to deal with the bankruptcy court problem in a sufficiently flexible manner. A system of life-tenured judges cannot be easily altered or adjusted, for example, in the event that reduced burdens upon the bankruptcy court result from improved economic conditions. In view of the fact that the current number of bankruptcy cases is at a near record high, some Members believed that it would be inappropriate to establish new permanent Federal judgeships on the basis of the number of current bankruptcy cases. Under an Article III approach, these positions would be locked in permanently; under the approach adopted by the Committee, Congress is capable of restructuring the bankruptcy system in the event of fluctuations in bankruptcy filings.

Specialization.—Another often expressed concern, particularly among the bankruptcy bar, has been the need to secure the appointment of individuals who would see the handling of bankruptcy cases as their priority. This was necessary both to ensure the expeditious resolution of bankruptcy cases, as well as to ensure the necessary expertise to deal with the frequently complex disputes arising in the course of bankruptcy proceedings. While some of the Article III approaches would have addressed this concern, others would have established a system in which all Federal judges would be equally empowered to handle the full variety of cases, including bankruptcy cases, coming before the Federal courts. In addition to the concerns about slow case resolution, and lack of judicial expertise, many opponents of the Article III approach also suggested that the relatively less "glamorous" controversies of bankruptcy would invariably take a back seat in the district courts to other more prominent legal and constitutional controversies.

Workability.—The attitude of "if it ain't broke, don't fix it" seemed also to be raised frequently during consideration of alternative responses to *Marathon*. Rather than undertaking a radical restructuring of the Federal court system in order to address the Su-

preme Court's decision, many Senators seemed to be most comfortable with the minimal number of reforms necessary to respond to the constitutional objections raised to the bankruptcy system created by the Bankruptcy Act of 1978. The consensus view expressed repeatedly by active Federal judges[58a] was that the bankruptcy system had been functioning well under the Interim Rules and that a permanent system fashioned upon such a model would be likely to work well on a permanent basis. The approach contained in S. 1013 probably comes closest to codifying the interim rule, and would appear to be the approach least disruptive of the present system (while, in the view of the Committee, effectively overcoming the constitutional infirmities of the 1978 system). Only a very small percentage of bankruptcy cases under the Interim Rule has required action by an Article III judge. Under an Article III approach, every case would require such involvement.

In summary, the Committee has given serious consideration to a variety of responses to the *Marathon* decision since it was issued by the Court in mid-1982. While there are differing preferences among Members of the Committee, it is clear that S. 1013 reflects an approach most strongly favored by these Members and best avoids the many difficulties that are seen attendant to any form of Article III legislative response. In short, the Committee, in recommending passage of this bill, does so on the basis of having carefully examined the principal alternatives.

VIII. Constitutionality of S. 1013

The critical question surrounding S. 1013 is its constitutionality. Coming in response to the Supreme Court's decision in *Northern Pipeline Construction Co.* v. *Marathon Pipe Line Co.*,[59] overturning the bankruptcy court system established under the Bankruptcy Reform Act of 1978, S. 1013 is designed to establish a new system of bankruptcy courts that will satisfy the requirements of the Constitution.

The *Marathon* decision, as one in which there was no majority opinion, is subject to varying interpretations. Depending upon whether one places primary weight on the plurality opinion of Justice Brennan or the necessary concurring opinion of Justice Rehnquist, the required legislative response to *Marathon* may be viewed in a widely disparate manner by different observers.

The Committee, however, has chosen to adopt what it considers to be a reasonable and well-founded interpretation of *Marathon*, but one narrower than might have been adopted by other reasonable observers. It is the view of the Committee that Justice Rehnquist's concurring views (with Justice O'Connor) fairly define the breadth of the holding in *Marathon*.[60] Where no opinion of the Court has received a majority, the "holding of the Court may be viewed as that position taken by those Members who concurred in the judgements on the narrowest grounds".[61]

[58a] See *supra* note 57.
[59] 102 S.Ct. 2858 (1982).
[60] *See Id.* at 2880–82.
[61] *Gregg* v. *Georgia*, 428 U.S. 153, 169n. 15 (1976).

As the Committee interprets it, the holding in *Marathon* thus can be summarized as follows: Absent the consent of parties to litigation, Article III of the Constitution requires that "traditional" state common-law actions, which are only tangentially related to a title 11 bankruptcy action, be tried before an Article III judge. In other words, the substance of *Marathon* is that a State law case of the type involved in *Marathon* has to be decided, not by an Article I bankruptcy judge, but by an Article III district judge, unless the parties consent otherwise. The Committee believes that only this portion of the jurisdiction conferred upon bankruptcy judges by the 1978 Act was, in fact, held unconstitutional by the Court in *Marathon*. Five justices did not find unconstitutional the exercise by Article I judges of core questions of bankruptcy law under title 11. Consequently, the Committee does not view *Marathon* as calling into question the authority of Article I bankruptcy judges to handle bankruptcy cases and other proceedings.

The controversy in *Marathon* involved the valuation of certain contract claims held by Marathon Pipe Line Co. and which Northern Pipeline Co. sought to bring within the scope of Marathon's bankruptcy assets. Because this clearly involved a state law claim, Marathon objected to the jurisdiction asserted by the bankruptcy court and argued that only an Article III court could entertain such a claim. As the concurring opinion in *Marathon* noted,

> There is apparently no Federal rule of decision provided for any of the issues in the lawsuit; the claims of Northern arise entirely under State law.[62]

With respect to such issues, both the concurring opinion, as well as the plurality opinion, concluded that Federal judicial power could be brought to bear only through judges possessed of the attributes of life tenure and protection against salary diminution specified by Article III.

The scheme of bankruptcy courts established by the 1978 Bankruptcy Act did not satisfy this requirement, in the view of either opinion. The system of bankruptcy courts was not sufficiently "adjunct" to the district courts to allow the actions and decisions of the bankruptcy court to be treated as the equivalent of the district court. While there is no clear line of demarcation between what constitutes such an "adjunct" court and what does not, there are several identifying characteristics alluded to in *Marathon*.

To Justice Brennan in his plurality opinion, the fundamental question is whether "the essential attributes of the judicial power" have been retained.[63] This, in turn, translates into an inquiry about the extent of control maintained by the district court over the adjunct tribunal. He finds it significant that the bankruptcy courts in *Marathon* could exercise the full scope of the judicial function, including the determination of the factual issues upon which a State claim rested, and issue final judgements which would become binding and enforceable in the absence of judicial review or indeed any participation at all by an Article III judge. The mere opportunity for appellate review by the district judge

---

[62] 102 S. Ct. at 2881.
[63] *Id.* at 2878.

was insufficient to transform the bankruptcy court into a court truly adjunct to the district court.[64]

While the concurring opinion agreed that normal appellate review by the district court was insufficient to establish the bankruptcy court as an "adjunct," empowered to hear Article III cases, it focused as well upon a different attribute of a genuine adjunct court. To Justice Rehnquist, it was significant that the bankruptcy court sought to exercise its jurisdiction in the absence of consent by the litigating parties. As he observed,

> None of the cases cited by the dissent has gone so far as to sanction the type of adjudication to which *Marathon* will be subjected *against its will* under the provisions of the 1978 Act.[65]

S. 1013 attempts to address the constitutional requirements placed upon the bankruptcy system by the Court in *Marathon*? It attempts to do this by enacting two substantial changes in the administration of the bankruptcy system. First, it would give more control to the parties in *Marathon*-type litigation to determine the forum in which their cases will be heard, including the opportunity to determine that they will be heard by an Article III court. Second, it would give more control to the district court judges themselves to determine the forum in which *Marathon*-type cases will be heard, including that of the district court. The Committee believes that either of these changes might be adequate to address the constitutional shortcomings of the present system, but that, taken together, they create a substantial likelihood that the proposed new bankruptcy system will be found constitutional. Given the ambiguities that some see in *Marathon*, it would be difficult to make a stronger statement about virtually any new legislative proposal.

MORE CONTROL TO THE PARTIES

S. 1013 would accord substantial new authority to the parties in *Marathon*-type litigation to choose the forum in which their cases would be heard. Section 1471(h) of this measure would accord both parties the absolute right to have state law claims adjudicated in an Article III district court. Only to the extent that such parties waived this right would the bankruptcy court be allowed to decide these claims along with the related title 11 claims. In the absence of waiver, *Marathon* claims would have to be resolved by the kind of tribunal demanded by both opinions in *Marathon*—judges fully possessing the "essential attributes of the judicial power" under Article III of the Constitution.

While the concurring opinion in *Marathon* was explicit in its statement that the absence of consent-based subject matter jurisdiction was fatal to the scheme established in the 1978 Bankruptcy Act, there is nothing in the plurality opinion to suggest that Congress lacks the power to provide for such jurisdiction in an Article I judge with respect to questions falling within the perview of the Article III judiciary. Because *Marathon* clearly involved parties

---

[64] *Id.* at 2878-90.
[65] *Id.* at 2881-82 [Emphasis added].

who objected to the conferral of jurisdiction upon the bankruptcy court, the issue of consent was never directly before the Court except in the sense that the concurring opinion viewed it as a necessary element of an Article I court proceedings purporting to decide an Article III claim. Nothing therefore in the plurality opinion could be read to have rejected the view of the Committee that the granting of such jurisdiction is a permissible legislative action.

The lead decision is *Kimberly* v. *Arms,*[66] in which the issue of placing Article III subject matter jurisdiction in non-Article III courts, by consent, was considered by the Supreme Court. Following a discussion of the "master in chancery" and the official duties of such an officer (equivalent to a special master), the Court stated,

> It is not within the general province of the master to pass upon all issues in an equity case, nor is it competent for the court to refer the entire decision of a case to him without the consent of the parties. It cannot, of its own motion or upon the request of one party, abdicate its duty to determine by its own judgment the controversy presented and devolve that duty upon any of its officers. But when the parties consent to the reference of a case to a master or other officer to hear and decide all the issues therein and report its findings, both of law and fact, and such reference is entered as a rule of the court, the master is clothed with very different powers from those which he exercises upon ordinary references, without such consent; and his determinations are not subject to be set aside and disregarded at the mere discretion of the court. A reference by consent of parties, of an entire case for determination of all its issues, though not strictly a submission of the controversy to arbitration—a proceeding which is governed by special rules—is a submission of the controversy to a tribunal of the parties' own selection, to be governed in its conduct by the ordinary rules applicable to the administration of justice in tribunals established by law. Its findings, like those of an independent tribunal, are to be taken as presumptively correct, subject, indeed, to be reviewed under the reservation contained in the consent and order of the court, when there has been manifest error in the consideration given to the evidence, or in the application of the law, but not otherwise . . . . The reference of a whole case to a master is a power incident to all courts of superior jurisdiction . . . .[67]

The earlier case of *Heckers* v. *Fowler,*[68] had established an even broader rule. In that case, the Court observed that the parties in litigation had,

> agreed in writing to refer the cause to a referee, "to hear and determine the same and all the issues therein, with the same powers as the court, and that an order be entered making such reference, and that the report of the

[66] 129 U.S. 512 (1888).
[67] 129 U.S. at 523-25.
[68] 69 U.S. 123 (1864).

> referee have the same force and effect as a judgment of the court."[69]

Thus, the parties could properly consent, even to the formal and ministerial entry of judgment by the Article III court in direct response to the findings and conclusions of the referee.

In a more contemporaneous context, the issue of consent based subject matter jurisdiction has been raised several times in reference to the ability of Federal magistrates to handle cases within the scope of the district court's jurisdiction. Federal court decisions have invariably upheld such authority upon consent by the parties. The First Circuit, for example, in considering a challenge to a pre-'Magistrates Act of 1976' exercise of magisterial authority, stated,

> Defendants argue that it is constitutionally impermissible for an Article III judge to abjure decision making responsibilities and that the judge is therefore without power to invest other non-Article III judicial officers or parajudges, such as magistrates, with broad authority. However persuasive such an argument may generally be . . . quite different policy and precedent should apply where the parties to a civil dispute themselves select another forum. The issue is not the power of the judge to refer, but the power of the parties to agree to another arbiter, absent overriding constitutional considerations.[70]

Thus, although arguments have been made that the parties to a case cannot waive the lack of subject matter jurisdiction the cases make clear that such a rule does not apply to a consensual referral, particularly to an adjunct of the court.

In conclusion, the Committee believes that the concept of attaching Article III subject matter jurisdiction to a non-Article III court is an appropriate exercise of legislative discretion, where there is consent by the parties. In particular, it believes that the provisions of section 1471(h) represent an appropriate exercise of this authority and that its existence makes a substantial contribution toward repairing the constitutional infirmities of the present bankruptcy system. To the extent that the parties to *Marathon*-type litigation are able to exercise discretion to ensure that their cases are heard by Article III judges, the concerns raised by the concurring opinion in *Marathon* would seem to be addressed.

MORE CONTROL TO THE DISTRICT JUDGE

S. 1013 would also accord substantial new authority to the district judge to control the forum in which *Marathon*-type cases are litigated. Section 1471(d) is the principal provision in this regard. Under this section, the district judge would have plenary discretion to recall from the bankruptcy court, any case before the Article I court, including, of course, any *Marathon*-type case. A recall by district court would be a wholly non-reviewable decision.

To the extent that this authority exists, it is far more difficult to characterize the bankruptcy courts created under S. 1013 as any-

---

[69] 69 U.S. at 127.

[70] *DeCosta* v. *Columbia Broadcasting System*, 520 F.2d 499, 503-04 (1975)

thing other than true adjunct courts to the district court. This plenary authority to recall cases contrasts sharply with the bankruptcy system established under the stricken 1978 Act in which no recall authority whatsoever existed in the district court. It would, in the view of the Committee, vitiate any implication that the bankruptcy court is intended to possess or exercise any jurisdiction not already possessed or capable of exercise by the district court.

It is interesting to note in this regard that pre-1978 bankruptcy administration was distinguishable from the 1978 Act in Justice Brennan's view by the fact that under the former system, ". . . the district court retained control over the reference to the bankruptcy referee by his power to withdraw the case from the referee." [71] The "virtue" of such a system is that at least, "the primary danger of a 'threat' to the independence of the adjunct comes from within, rather than without the judicial department".[72]

In addition to this recall feature, S. 1013 makes certain other lesser changes designed to enhance the control of the Article III courts over the adjunct bankruptcy courts. For example, appeals from bankruptcy court decisions under S. 1013 will be routed to the district court rather than allowing them to go to a separate appellate panel of bankruptcy judges as under the 1978 Act. In addition, S. 1013 repeals section 1481 of the 1978 Act which provided that bankruptcy courts were to have "the powers of a court of equity, law, and admiralty . . .". The Committee again felt it more appropriate, following *Marathon,* to allow the councils of each judicial circuit to make necessary and appropriate orders regarding the administration of such cases.

S. 1013 also amends section 250 of the 1978 Act to delete the authority of the bankruptcy courts to issue writs of habeas corpus. Under the present bill, this authority remains exclusively within the jurisdiction of the district courts. In other areas, the Committee has retained those provisions of the 1978 Act which it feels reflect new the adjunct nature of the new bankruptcy courts, including provisions for the removal of bankruptcy judges by the councils of the judicial circuits.

The Committee believes that the conjunction of the new authority placed in the parties, and the district judge, by S. 1013 adequately addresses the constitutional concerns of the Court in *Marathon,* as the Committee interprets those concerns. While maintaining in place a system of bankruptcy courts designed to ensure the expeditious and expert administration of justice in matters of bankruptcy, S. 1013 also ensures that the legitimate, constitutional interest of parties in an Article III forum for Article III cases is satisfied. In addition, the more general interest of the judiciary itself in ensuring that Article III courts remain the proper forum for Acticle III cases, even in instances where the parties have consented to jurisdiction elsewhere, is fully protected.

---

[71] 102 S.Ct. at 2876 n.31.
[72] *Id.*

OTHER ISSUES

A number of other issues relating to the constitutionality of S. 1013 deserve brief discussion here. The first relates to the definition of a *Marathon*-type issue. While one can interpret such an issue in the narrowest possible manner, the Committee believes that section 1471(e)(2) ensures that those matters which can conceivably be viewed as *Marathon*-type issues, and therefore entitled to be heard by an Article III court, will be subject to the mandatory recall (upon motion) provision.

By bringing within the scope of this recall all claims based under State law, the Committee is effectively describing those proceedings which, until the 1978 Act, would likely have been brought in State court in the first place.

A second issue involves the extent to which parties can waive their right to a hearing in a district court on a *Marathon* issue in the absence of an affirmative statement of waiver. Under section 1471(g), consent by the parties to the exercise of authority by the bankruptcy court is presumed in the absence of a timely motion by a party requesting recall by the district court. Is such implied consent consistent with the Constitution? Can such a presumption of waiver be established in S. 1013, or must a party be presumed not to have waived a constitutional right to an Article III forum in the absence of an affirmative statement of waiver?

While the Committee respects the general proposition that constitutional rights may not be waived "in the absence of an intentional relinquishment or abandonment of a known right or privilege,"[73] it also believes that this is not inconsistent with a presumption of the sort established in S. 1013. Rule 38(b) of the Federal Rules of Civil Procedure, for example, requires parties in cases in which there is a right to a jury trial to make a "timely demand" for such a trial and to serve this demand upon other parties. Failure to make such a demand constitutes a waiver of the right. This procedure has been reviewed by several circuit courts and has not been found to be constitutionally infirm.[73a]

Because the requirement that a hearing in the Article III court must be affirmatively demanded at the pleading stage of the trial is made express in S. 1013—therefore apprising all parties from the outset what their rights are and how they are to be asserted—the Committee believes that the implied consent of section 1471(g) is consistent with the Constitution. It also believes that the discretionary recall authority in the district judge serves to provide an opportunity for subsequent recall in the event that an injustice is created by an inadvertent failure to move recall in a timely manner.

A third issue relates to the proper standard of review to be exercised by the district court over the decisions of magistrates and special masters to whom recalled cases may be delegated under section 1471(f). The district judge is empowered either to refer such cases to bankruptcy judges designated as special masters, or else to magistrates (who may either be regular magistrates or bankruptcy

---

[73] *Johnson* v. *Zerbst*, 304 U.S. 458, 464 (1938).

[73a] *Rutlege* v. *Electric Hose & Rubber Co.* 511 F.2d.668 (9th Cir. 1975); *Gen. Tire & Rubber Co.* v. *Watkins* 331 F.2d 192 (4th Cir. 1964).

judges designated as magistrates). In both instances, the specified standard of review—in the event that the district judge does not specify otherwise—is the existing legal standard for judicial review of such officers. A *de novo* determination by the district judge of the case before the magistrate is permitted under section 636 of the Magistrate's Act, while a "clearly erroneous" standard of review is established under Rule 53(e)(2) of the Federal Rules of Civil Procedure for decisions of special masters.

The Committee believes that these provisions also pass constitutional muster. The magistrate and the special master both possess the attributes of an adjunct of the district court. As the Supreme Court observed in a 1980 decision regarding magistrates.

> In passing the 1976 amendments to the Federal Magistrates Act, Congress was alert to Article III values concerning the vesting of decisionmaking power in magistrates. Accordingly, Congress made clear that the district court had plenary discretion whether to authorize a magistrate to hold an evidentiary hearing and that the magistrate acts subsidiary to and only in aid of the district court. Thereafter, the entire process takes place under the district court's total control and jurisdiction.[74]

The district court is entitled to a *de novo* determination of the findings and recommendations of the magistrate, with ultimate authority reposed in the district court to issue appropriate orders. There is far greater opportunity for the Article III judge to review the decisions of the magistrate than merely the "traditional appellate review" condemned by Justice Rehnquist in his concurring views in *Marathon.*[75]

With respect to special masters, while Rule 53 specifies a more deferential standard of review in the district court, it also contemplates a substantially different role for the master than Title 28 contemplates for the magistrate. The master is an even more inextricable adjunct of the Article III court than the magistrate, to whom reference is to be made only with respect to some unusually complicated issue, a difficult computation or calculation, or a highly technical determination of some sort. The master is normally designated, not to hear a total case, but only to consider discrete issues arising within a case, the disposition of which is beyond the general competence of the district judge.

It would be impractical, with respect to matters being delegated to a master, to establish a significantly less deferential standard for review in the district court for precisely the reasons that such matters have been delegated to the master in the first place. They are simply beyond the practical competence of a court of general jurisdiction, or else consist of determinations which, for reasons of time or resources, are beyond the practical ability of the court. As one court has observed:

> The use of masters is permitted because they improve the judicial process by bringing to the court skills and experience which courts frequently lack.[76]

---

[74] *United States* v. *Raddatz*, 447 U.S. 667. (1980).
[75] *See* 102 S ct. at 2882.
[76] *Reed* v. *Cleveland Board of Education*, 607 F. 2d 737 (6th Cir. 1979).

Unlike some non-Article III courts, where the legislative objective is to displace an Article III court in its judicial duties, the purpose of the master is to enhance the ability of the Article III court to effectively exercise its judicial functions.

Because of this unique role, the Committee believes that the standard of review provided decisions by special masters can be justified. There is no decision, of which it is aware, that suggests that there are constitutional difficulties with such a standard.

The Committee also notes that the district judge, responsible for delegating to either a magistrate or special master under section 1471(f) may exercise discretion and retain a greater opportunity to review the product of either judicial officer. It believes that this will effectively shield this provision from constitutional challenge or, at the least, ensure that any serious constitutional attack would take place only in the context of an individual case rather than on a *per se* basis.

STATE LAW MATTERS

One much overlooked aspect of the Bankruptcy Act of 1978 was its significant expansion of Federal jurisdiction. Under section 1471(b) of the Act, the scope of Federal jurisdiction included not only traditional bankruptcy cases "arising under" or "arising in" Federal bankruptcy law, but also "related" cases grounded entirely in State law which may have involved the debtor and been only tangentially related to issues of bankruptcy.[76a] Under this provision, Federal bankruptcy or district courts would have been empowered to exercise jurisdiction over matters historically within the purview of State courts and outside that of the Federal judiciary.

There is serious constitutional question about the ability of Congress to establish jurisdiction in the Federal courts over causes arising purely under State law, e.g. contract claims, property valuation, etc., where (a) there is no diversity of jurisdiction; and (b) there is no other direct Federal question jurisdiction.[77] Although this issue has not yet been raised in the Supreme Court (largely due to the focus that has been spent on the *Marathon* issue of Article I vs. Article III courts), the Court is clearly not oblivious to this matter. As the plurality opinion in *Marathon* observed in describing the 1978 reforms,

> the 1978 Act made at least three significant changes from the bankruptcy practice that immediately preceded it. First, of course, the jurisdiction of the bankruptcy courts was "substantially expanded by the Act . . . It cannot be doubted that the new bankruptcy judges, unlike the referees, have jurisdiction far beyond that which can be even arguably characterized as merely incidental to the discharge in bankruptcy or a plan for reorganization.[78]

[76a] *See, e.g.*, Note, Selective Exercise of Jurisdiction in Bankrupty-Related Civil Proceedings, 59 Tex. L. Rev. 325, 330n.42 where the author gives an example of a controversy over which bankruptcy courts waved have jurisdiction even if neither the debtor nor a representative of the estate were a party.

[77] See, *e.g.*, Note, *Bankruptcy and the Limits of Federal Jurisdiction*, 95 Harv. L. Rev. 703 (1982).

[78] *102 S. Ct. at 2876 n. 31.*

In addition, a number of legal observers have found the new Bankruptcy Act to be wanting in the overly broad jurisdiction conferred upon the Federal courts. As one scholarly commentary has noted,

> Article III grants the Federal courts jurisdiction over cases "arising under" the Constitution and Federal laws. Under the Bankruptcy Reform Act, however, the bankruptcy courts have frequently claimed jurisdiction over claims that are governed by substantive State law. This practice raises the constitutional issue of Congress' authority to grant the Federal courts jurisdiction over cases that do not require the construction or enforcement of Federal laws because the applicable substantive law is State created.[79]

In an effort to at least partially address this concern, the Committee has chosen in S. 1013 to accord far greater opportunity for purely State law issues that are only indirectly related to bankruptcy proceedings to be adjudicated in State court. Section 1471(h)(1) provides for the specific consideration of "the interest of comity with State courts and respect for State law" by the district judge in determining when to abstain from hearing a particular case. In addition, and even more significantly, section 1471(e)(2) requires the district judge to abstain in the case of related State law claims which have been recalled from the bankruptcy court, at the request of either party. Such claims would then be heard only in the appropriate State forum.

While there is some sentiment among Members of the Committee to return all State law proceedings to State court, the Committee believes that the solution adopted in section 1471(h)(2) draws an equitable balance between the legitimate interests of federalism—federal courts deciding federal law, State courts deciding State law—and the important interests promoted by the 1978 Act in consolidating as much jurisdiction as possible in a single decision-making body. Whether or not it is consistent with the Constitution to repose even consent-based subject-matter jurisdiction predicated upon State law in the Federal courts is, of course, an open question. The Committee does believe, however, that the new respect shown for State tribunals in S. 1013, as well as that shown for parties who have a legitimate right to have their disputes adjudicated in such forums, makes it far more likely that the newly established arrangement will be upheld than would its predecessor under the 1978 Act.

Finally, in considering the constitutional implications of S. 1013, the Committee has taken cognizance of the fact that those Federal courts which have passed upon the constitutionality of the Interim Rule,[80] under which the bankruptcy system has been operating since *Marathon*, have invariably upheld it.[81] While this Rule is dif-

---

[79] Note, 95 Harv. L. Rev. at 706.

[80] The Judicial Conference of the United States issued the interim Rule, which was adopted as a local rule by the judicial Council in each circuit.

[81] *See* Braniff Airways, Inc. v. CAB, No. 83-1048 (5th Cir., Feb. 28, 1983); *In re* Northland Point Partners, No. 82-05387 (E.D. Mich. Jan. 7, 1983) (order only, opinion pending).

ferent in a number of particulars from the instant legislation, it also shares a great many similarities: automatic reference is made to the bankruptcy judge, discretionary recall is permitted by the district court judge, bankruptcy judges cannot enter final orders on *Marathon*-type cases absent consent by the parties. The fact that the Rule has been universally upheld by the Federal courts that have, thus far, looked at the issue is an encouraging sign. The Committee is not oblivious, however, to the argument that what might be satisfactory in the context of an emergency rule might not be satisfactory in the context of a permanent structure. It is that uncertainty which is an unavoidable part of the proposed reform but one which the Committee nevertheless believes is likely to be resolved in behalf of the validity of S. 1013.

In summary, the Committee on the Judiciary believes that S. 1013 represents an appropriate constitutional response to the Supreme Court's decision in *Marathon*. Not only, does it address the concern that the bankruptcy structure created by the 1978 Act was inconsistent with the demands of Article III of the Constitution but it addresses a hitherto secondary concern expressed by many observers that the nature of Federal jurisdiction created by the Act was inconsistent with this Article. As a result, the Committee believes that the instant legislation—while certain to be subject to testing in the Federal courts—will eventually promote a period of stability within the bankruptcy system.

IX. Section-by-Section Analysis

TITLE I

Section 101 repeals the jurisdictional provisions of the 1978 Bankruptcy Reform Act, which were struck down by the Supreme Court's *Marathon* decision.

Section 102 enacts a new chapter 90 of 28 U.S.C., which defines the jurisdiction, venue, and powers of the district and bankruptcy courts:

Section 1471 prescribes the jurisdiction of the district courts and authorizes for the exercise of jurisdiction by the adjunct bankruptcy courts, subject to the control of the district court. Subsection (a) grants exclusive jurisdiction to the district courts over all cases under title 11. Subsection (b) grants original but not exclusive jurisdiction to the district courts over all civil proceedings arising under title 11, or arising in or related to cases under title 11.

Under subsection (c) of section 1471, all cases and proceedings are to be referred initially to the bankruptcy court, and, unless a case or proceeding has been recalled by the district court, the bankruptcy court is authorized to exercise all of the jurisdiction of the district courts, except where inconsistent with the Constitution. Subsection (d) provides that the district court may recall any case or proceeding from the bankruptcy court, on its own Motion. Subsection (e)(1) provides that a party or the bankruptcy judge may file a petition for recall of any civil case or proceeding referred to the bankruptcy court. Recall by the district court is discretionary, except that recall shall be granted in two instances specified in subsection 1471(e)(z): (1) with respect to a proceeding involving a

claim or cause of action which is not one arising under title 11; and (z) where the district court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce. However, subsection (g) provides that any party shall be deemed to have consented to the exercise of authority by the bankruptcy court unless the party has filed a timely motion for recall, and any such motion must be presented in the party's first pleading in the case. Under subsection (d), in any recalled case or proceeding, the district court may designate a bankruptcy judge to serve with the authority of a special master or a United States magistrate. The provisions of Fed. R. Civ. P. 53 or 28 U.S.C. § 636 would apply in those circumstances.

Subsection (h) of section 1471 retains the current provisions of the 1978 Act which authorize a district court to abstain from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11, except that the language is amended to include a consideration of "the interest of comity with State courts and respect for State law." Paragraph (2) thereof gives further effect to this deference by requiring the district to abstain from hearing any claim arising under State law in a related proceeding where a party has made a motion for recall. Paragraph (3) relates to the time limits within which abstention motions may be made. Subsection (i) is identical to the current provision of the 1978 Act, and vests jurisdiction of all the debtor's property wherever located in the bankruptcy court.

Section 1472 is identical to the corresponding section enacted by the 1978 Bankruptcy Reform Act.

Section 1473, 1474, and 1475 except that it provides for venue of cases under title 11 in the district courts rather than the bankruptcy courts are virtually identical to the corresponding provisions of the 1978 Act, except for a reference to the district courts rather than to the bankruptcy courts. Section 1476 of existing law dealing with creation or alteration of districts or divisions and section 1477 of existing law dealing with cure or waiver of defects are deleted because they are repititive of other provisions of Federal law. Section 1475 also allows for venue in a case or proceeding to be transferred solely for reasons of the "convenience of the parties." Section and 1479 of the 1978 Act, which deals with provisional remedies and security, is deleted.

Section 1476 is very similar to section 1478 of existing law pertaining to removal of bankrupty cases, except for reference to district courts rather than to bankruptcy courts.

Section 1477 as added by the bill, is viturally the same to the jury trial provisions of section 1480 of the 1978 Act. Sections 1481 and 1482 of the 1978 Act are deleted. The powers of bankruptcy judges are now set forth in the new 28 U.S.C. § 161, as added by section 103 of the bill. This bill also abolishes the authorization for bankruptcy appellate panels in the 1978 Act.

Section 103 adds a new § 145 to title 28. Sec. 145 provides for the promulgation of rules by the district courts for the prompt determination of cases and proceedings in bankruptcy and for the assignment of one or more district judges in each district a primary responsibility of whom is to hear such cases and proceedings. The

provision also authorizes the creation of a separate calendar for bankruptcy cases and proceedings.

Section 104 provides additional authority for the judicial councils of the circuits to issue orders for the expeditious administration of justice in the district and bankruptcy courts in bankruptcy cases, and to define the powers of the bankruptcy courts.

Section 105 makes conforming changes to 28 U.S.C. 636, to authorize United States magistrates to perform in bankruptcy cases the same functions that they currently exercise in civil and criminal cases.

TITLE II

Section 201 provides for the appointment of 229 bankruptcy judges for the several judicial districts, essentially in the same numbers as are presently authorized under the transition provisions of the 1978 Act. The other provisions of chapter 6 of title 28, as added by the 1978 Act, are left unchanged. The bankruptcy judges are to be appointed by the President with the advice and consent of the Senate for 14-year terms. Under the transition provisions of the 1978 Act, the provisions of chapter 6 will become effective on April 1, 1984.

TITLE III

Section 301 provides for the appointment of 24 additional circuit judges to handle current caseloads and the increase in appellate caseloads as a result of this Act. This section is based on the 1980 and 1982 recommendations of the Judicial Conference of the United States.

Section 302 provides for the appointment of 51 additional district judges to handle the current backlog of civil and criminal cases and the increased burden on the district courts under this Act. This section is based on the 1980 and 1982 recommendations of the Judicial Conference.

TITLE IV

Section 401 provides an updated retirement system for Article III judges, incorporating the so-called "rule of 80." This allows the consideration of both a judge's age and his tenure of service in computing his eligibility for retirement. This section is identical to the proposal of the Judicial Conference of the United States.

Section 402 provides for the retirement of current bankruptcy judges who are not reappointed to the bankruptcy court under this Act, and for newly appointed bankruptcy judges under this Act. This provision is intended essentially to afford bankruptcy judges the same retirements as for members of Congress, which are more generous than the civil service retirement benefits the bankruptcy judges currently receive. This section requires current bankruptcy judges to serve until the end of the transition period on March 31, 1984.

Section 403 is a technical amendment clarifying a reference to the 1978 Act.

Sections 404, 405, 406, and 407 amend provisions of chapter 87 of title 5, relating to life insurance, to provide new rules for the continuation or conversion of life insurance coverage for justices or judges of the United States who retire or resign from office.

Section 408 is a technical amendment providing for the temporary designation of circuit judges to the bankruptcy court.

Section 409 makes several technical amendments providing for the official stations of bankruptcy judges.

Section 410 is a technical amendment including clerks of the bankruptcy courts under certain restrictions on the duties of court clerks.

Section 411 makes technical changes regarding state civil jurisdiction in which Indians are parties.

Section 412 amends the habeas corpus provisions of the 1978 Act to grant this authority to the district courts rather than the bankruptcy courts.

Section 413 provides for an extension of the term of current bankruptcy judges until their successors are appointed under this Act, but not later than October 1, 1984.

Section 414 is a technical amendment authorizing the current bankruptcy judges to exercise the jurisdiction conferred by this Act during the remainder of the transition period.

Section 415 repeals certain provisions of the 1978 Act that have been superseded by the provisions of this Act.

Section 416 provides an effective date for the insurance policy amendments made by sections 404 to 407 of the bill.

Section 417 provides that, with certain exceptions, the provisions of the bill become effective upon enactment. Provisions relating to the powers of the United States magistrates and the appointment of new bankruptcy judges, and certain technical amendments, will become effective on April 1, 1984.

X. Estimated Costs

In accordance with Section 252(a) of the Legislative Reorganization Act, 2 U.S.C. 190(j), the Committee estimates that there will be added cost due to this Act and adopts the cost estimate prepared by the Congressional Budget Office as follows:

U.S. Congress,
Congressional Budget Office,
Washington, D.C., April 5, 1983.

Hon. Strom Thurmond,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

Dear Mr. Chairman: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed the Bankruptcy Court and Federal Judgeship Act of 1983, as ordered reported by the Senate Committee on the Judiciary, March 22, 1983.

The bill revises the laws governing the jurisdiction of United States bankruptcy courts and provides for the establishment of new district court and circuit court judgeship positions. Under the bill, district courts would be given original and exclusive jurisdiction over virtually all cases involving Title 11 bankruptcy questions, in-

cluding subsidiary and related proceedings. Bankruptcy courts would be granted the same powers as the district courts, with a number of restrictions. The district courts would also be given the authority to recall cases from the bankruptcy courts on the motion of the district judge, of the parties involved in a case, or of a bankruptcy judge. Cases involving related or subsidiary proceedings would automatically be sent to the district court.

The bill provides for the appointment of 51 new district judges and 24 new circuit judges. In addition, effective April 1, 1984, the bill provides for a total of 229 bankruptcy judges, three less than the current 232 full-time equivalent positions. The President may appoint the new district and circuit court judges, with the advice and consent of the Senate, any time after enactment of the bill. The bill also modifies the retirement provisions covering Article III judges, transition bankruptcy judges, and newly appointed bankruptcy judges.

The major budgetary effects of the bill result from the establishment of new district and circuit court judicial positions, which are partially offset by the reduction in the number of bankruptcy positions. Assuming that an average of two district judges and one circuit judge are confirmed each month until all judicial positions are filled, the estimated additional cost to the government would be as shown in the following table.

NET COSTS OF ADDITIONAL JUDICIAL POSITIONS CREATED BY THE BANKRUPTCY COURT AND FEDERAL JUDGESHIP ACT OF 1983

[By fiscal years, in millions of dollars]

	1983	1984	1985	1986	1987	1988
District judges	0.8	9.4	17.8	19.1	20.1	21.1
Circuit judges	0.5	4.8	8.3	8.8	9.3	9.7
Bankruptcy judges		−0.1	−0.3	−0.3	−0.3	−0.3
Total	1.3	14.1	25.8	27.7	29.1	30.5

Note: Details may not add to totals due to rounding.

The total costs associated with adding new judicial positions are $300,000 to $400,000 per year, and include the higher judicial payroll, additional support staff (such as law clerks, court reporters, and secretaries), and other administrative expenses necessary to establish a new circuit or district judicial position. The estimated cost of such positions is based on information from the Administrative Office of the U.S. Courts and on analysis of current spending levels.

The bill also establishes a new, more generous retirement program for bankruptcy judges who are not reappointed to the new bankruptcy court and for newly appointed bankruptcy judges. The exact amount of the benefit is based on number of years of service and the largest annual salary resulting from averaging the pay received by a judge for three consecutive years. Overall, benefits under the new plan are approximately 25 percent greater than those provided under the current retirement program. CBO estimates that this provision of the bill would add no more than $0.7 million in additional federal expenditures in any given year.

The retirement system covering district and circuit judges is also modified by the bill, by allowing judges to either retire or become inactive senior status judges at age 65. Under current law, judges may assume inactive senior status position at age 65, but may not retire until age 70. Judges would also be allowed to retire or take senior status between the ages of 65 and 70 upon meeting certain service standards. Because of the status accorded senior inactive judges, and because senior status judges receive annual salary adjustment while retired judges do not, CBO assumes that most judges eligible to retire would continue to choose to remain in inactive positions. Consequently, CBO estimates that these retirement provisions would have no significant budgetary effect.

Enactment of this bill would not affect the budgets of state or local government.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN,
Director.

XI. REGULATORY IMPACT EVALUATION

In compliance with Rule XXVI, paragraph 11b of the Standing Rules of the Senate, the Committee finds that no significant regulatory impact as defined by that subsection will result from enactment of S. 1013.

XII. CHANGES IN EXISTING LAW

Changes in existing law made by the bill, as reported, are shown as follows: Existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman.

TITLE 28

* * * * * * *

Part IV.—JURISDICTION AND VENUE

81. Supreme Court 1251
83. Courts of Appeals 1291
85. District Courts; Jurisdiction 1331
87. District Courts; Venue 1391
89. District Courts; Removal of Cases from State Courts 1441
90. District Courts and Bankruptcy Courts *1471*
91. Court of Claims 1491
93. Court of Customs and Patent Appeals 1541
95. Customs Court 1581

* * * * * * *

CHAPTER 3—COURTS OF APPEALS

Sec.
41. Number and composition of circuits.
42. Allotment of Supreme Court justices to circuits.
43. Creation and composition of courts.
44. Appointment, tenure, residence and salary of circuit judges.
45. Chief judges; precedence of judges.

46. Assignment of judges; divisions; hearings; quorum.
47. Disqualification of trial judge to hear appeal.
48. Terms of court.

* * * * * * *

§ 44. Appointment, tenure, residence and salary of circuit judges

(a) The President shall appoint, by and with the advice and consent of the Senate, circuit judges for the several circuits as follows:

Circuits:	*Number of judges*
District of Columbia	[11] *12*
First	[4] *6*
Second	[11] *13*
Third	[10] *12*
Fourth	[10] *11*
Fifth	[14] *16*
Sixth	[11] *15*
Seventh	[9] *11*
Eighth	[9] *10*
Ninth	[23] *28*
Tenth	[8] *10*
Eleventh	*12*
Federal	*12*

* * * * * * *

CHAPTER 5—DISTRICT COURTS

* * * * * * *

Sec.
133. Appointment and number of district judges.
134. Tenure and residence of district judges.

* * * * * * *

144. Bias or prejudice of judge.
145. Promulgation of rules for bankruptcy cases and proceedings.

* * * * * * *

§ 133. Appointment and number of district judges.

The President shall appoint, by and with the advise and consent of the Senate, district judges for the several judicial districts, as follows:

Districts	*Judges*
Alabama:	
Northern	7
Middle	3
Southern	[2] *3*
Alaska	[2] *3*
Arizona	8
Arkansas:	
Eastern	3
Western	1
Eastern and Western	2
California:	
Northern	12
Eastern	6
Central	[17] *21*
Southern	7
Colorado	6
Connecticut	[5] *6*
Delaware	3
District of Columbia	15

Districts	*Judges*
Florida:	
Northern	3
Middle	9
Southern	[12] *15*
Georgia:	
Northern	11
Middle	[2] *3*
Southern	3
Hawaii	[2] *3*
Idaho	2
Illinois:	
Northern	[16] *19*
Central	3
Southern	[2] *3*
Indiana:	
Northern	4
Southern	5
Iowa:	
Northern	1
Southern	2
Northern and Southern	1
Kansas	5
Kentucky:	
Eastern	4
Western	[3] *4*
Eastern and Western	1
Louisiana:	
Eastern	13
Middle	2
Western	[5] *6*
Maine	2
Maryland	[9] *10*
Massachusetts	[10] *11*
Michigan:	
Eastern	[13] *15*
Western	4
Minnesota	[5] *6*
Mississippi:	
Northern	[2] *3*
Southern	[3] *5*
Missouri:	
Eastern	[4] *5*
Western	5
Eastern and Western	2
Montana	[2] *3*
Nebraska	3
Nevada	3
New Hampshire	2
New Jersey	[11] *14*
New Mexico	4
New York:	
Northern	[3] *4*
Southern	27
Eastern	[10] *12*
Western	3
North Carolina:	
Eastern	3
Western	3
Middle	3
North Dakota	2
Ohio:	
Northern	[9] *10*
Southern	6
Oklahoma:	
Northern	2
Eastern	1

Districts	Judges
Western	[3] *4*
Northern, Eastern, and Western	2
Oregon	5
Pennsylvania:	
Eastern	19
Middle	5
Western	10
Puerto Rico	7
Rhode Island	[2] *3*
South Carolina	8
South Dakota	3
Tennessee:	
Eastern	[3] *4*
Middle	3
Western	[3] *4*
Texas:	
Northern	9
Southern	13
Eastern	[4] *6*
Western	[6] *7*
Utah	3
Vermont	2
Virginia:	
Eastern	[8] *9*
Western	4
Washington:	
Eastern	2
Western	[5] *6*
West Virginia:	
Northern	[1] *2*
Southern	[3] *4*
[Northern and Southern	1]
Wisconsin:	
Eastern	4
Western	2
Wyoming	[1] *2*

* * * * * * *

§ 145. Promulgation of Rules for Bankruptcy Cases and Proceedings

(a) The chief judge of each district court shall be responsible for the expeditious determination of all cases and proceedings under title 11, including all subsidiary related proceedings which are before such court and may designate one or more district court judges whose primary responsibility shall be matters involving bankruptcy including subsidiary and related proceedings, and may designate such other district court judges as such chief judge deems necessary to carry out the provisions of this chapter.

(b) Each district court may promulgate local rules or orders to carry out the provisions of this chapter including rules or orders providing for the maintenance of a special bankruptcy calendar.

* * * * * *

CHAPTER 6—BANKRUPTCY COURTS

Sec.
151. Creation and composition of bankruptcy courts.
152. Appointment of bankruptcy judges.
153. Tenure and residence of bankruptcy judges.
154. Salaries of bankruptcy judges.
155. Chief judge; precedence of bankruptcy judges.
156. Division of business among bankruptcy judges.

157. Times of holding court.
158. Accommodations at places for holding court.
159. Vacant judgeship as affecting proceedings.
160. Appellate panels.

* * * * * * *

§ 152. Appointment of bankruptcy judges

(a) The President shall appoint, by and with the advice and consent of the Senate, bankruptcy judges for the several judicial districts. In each instance, the President shall give due consideration to the recommended nominee or nominees of the Judicial Council of the Circuit within which an appointment is to be made.

(b) Such bankruptcy judges shall be appointed for the several judicial districts as follows:

Districts	*Judges*
Alabama:	
Northern	*5*
Middle	*2*
Southern	*2*
Alaska	*1*
Arizona	*4*
Arkansas:	
Eastern	*1*
Western	*1*
California:	
Northern	*7*
Eastern	*4*
Central	*12*
Southern	*3*
Colorado	*4*
Connecticut	*2*
Delaware	*1*
District of Columbia	*1*
Florida:	
Northern	*1*
Middle	*2*
Southern	*3*
Georgia:	
Northern	*4*
Middle	*2*
Southern	*1*
Hawaii	*1*
Idaho	*1*
Illinois:	
Northern	*8*
Central	*2*
Southern	*1*
Indiana:	
Northern	*2*
Southern	*4*
Iowa:	
Northern	*1*
Southern	*1*
Kansas	*3*
Kentucky:	
Eastern	*1*
Western	*2*
Louisiana:	
Eastern	*2*
Middle	*1*
Western	*2*
Maine	*2*
Maryland	*2*
Massachusetts	*4*

Districts	Judges
Michigan:	
Eastern	4
Western	2
Minnesota	4
Mississippi:	
Northern	1
Southern	2
Missouri:	
Eastern	3
Western	3
Montana	1
Nebraska	1
Nevada	2
New Hampshire	1
New Jersey	5
New Mexico	1
New York:	
Northern	2
Southern	7
Eastern	6
Western	3
North Carolina:	
Eastern	2
Western	1
Middle	2
North Dakota	1
Ohio:	
Northern	8
Southern	7
Oklahoma:	
Northern	1
Eastern	1
Western	2
Oregon	4
Pennsylvania:	
Eastern	3
Middle	2
Western	3
Puerto Rico	2
Rhode Island	1
South Carolina	1
South Dakota	1
Tennessee:	
Eastern	2
Middle	2
Western	2
Texas:	
Northern	3
Southern	3
Eastern	1
Western	2
Utah	2
Vermont	1
Virginia:	
Eastern	3
Western	2
Washington:	
Eastern	1
Western	4
West Virginia:	
Northern	1
Southern	1
Wisconsin:	
Eastern	3
Western	2
Wyoming	1

* * * * * * *

CHAPTER 13—ASSIGNMENT OF JUDGES TO OTHER COURTS

Sec.
291. Circuit judges.
292. District judges.
293. Judges of the Court of International Trade.
294. Assignment of retired Justices or judges to active duty.
295. Conditions upon designation and assignment.
296. Powers upon designation and assignment.

§ 291. Circuit judges

(a) * * *

* * * * * * *

(b) The chief judge of a circuit or the circuit justice may, in the public interest, designate and assign temporarily any circuit judge within the circuit, including a judge designated and assigned to temporary duty therein, to hold a district *or bankruptcy* court in any district within the circuit.

* * * * * * *

CHAPTER 15—CONFERENCES AND COUNCILS OF JUDGES

Sec.
331. Judicial Conference of the United States.
332. Judicial councils of circuits.
333. Judicial conferences of circuits.
334. Institute and joint councils on sentencing.

* * * * * * *

§ 332. Judicial councils of circuits

* * * * * * *

(d)(1) Each judicial council shall make all necessary and appropriate orders for the effective and expeditious administration of justice within its circuit. Each council is authorized to hold hearings, to take sworn testimony, and to issue subpoenas and subpoenas duces tecum. Subpoenas and subpoenas duces tecum shall be issued by the clerk of the court of appeals, at the direction of the chief judge of the circuit or his designee and under the seal of the court, and shall be served in the manner provided in rule 45(c) of the Federal Rules of Civil Procedures for subpoenas and subpoenas duces tecum issued on behalf of the United States or an officer or agency thereof.

(2) All judicial officers and employees of the circuits shall promptly carry into effect all orders of the judicial council.

(3) Unless an impediment to the administration of justice is involved, regular business of the courts need not be referred to the council.

(4) The council may make necessary and appropriate orders and rules for the effective and expeditious administration of justice in the district and bankruptcy courts regarding the disposition of cases or proceedings under title 11, and for the administration of cases in

equity, law, and admiralty referred to the bankruptcy court which are within the authority of such court pursuant to chapter 90 of this title. Each such court, and all officers and employees of such court, shall promptly carry into effect all orders and rules of the council.

* * * * * * *

CHAPTER 17—RESIGNATION AND RETIREMENT OF JUDGES

Sec.
[371. Resignation or retirement for age.] *371. Retirement on salary; retirement in senior status.*
372. Retirement for disability; substitute judge on failure to retire.
373. Judges in Territories and Possessions.
374. Residence of retired judges; official station.
375. Annuities to widows of justices.
376. Annuities to widows and surviving dependent children of judges.
377. Bankruptcy judges.

[§ 371. Resignation or retirement for age

[(a) Any justice or judge of the United States appointed to hold office during good behavior who resigns after attaining the age of seventy years and after serving at least ten years continuously or otherwise shall, during the remainder of his lifetime, continue to receive the salary which he was receiving when he resigned.

[(b) Any justice or judge of the United States appointed to hold office during good behavior may retain his office but retire from regular active service after attaining the age of seventy years and after serving at least ten years continuously or otherwise, or after attaining the age of sixty-five years and after serving at least fifteen years continuously or otherwise. He shall, during the remainder of his lifetime, continue to receive the salary of the office. The President shall appoint, by and with the advice and consent of the Senate, a successor to a justice or judge who retires.]

§ 371. Retirement on salary; retirement in senior status

(a) Any justice or judge of the United States appointed to hold office during good behavior may retire from the office after attaining the age and meeting the service requirements, whether continuous or otherwise, of subsection (c) and shall, during the remainder of his lifetime, receive an annuity equal to the salary he was receiving at the time he retired.

(b) Any justice or judge of the United States appointed to hold office during good behavior may retain the office but retire from regular active service after attaining the age and meeting the service requirements, whether continuous or otherwise, of subsection (c) of this section and shall, during the remainder of his lifetime, continue to receive the salary of the office.

(c) The age and service requirements for retirement under this section are as follows:

Attained age:	*Years of service*
65	*15*
66	*14*
67	*13*
68	*12*
69	*11*
70	*10*

(d) The President shall appoint, by and with the advice and consent of the Senate, a successor to a justice or judge who retires under this section.

* * * * * * *

§ 377. Bankruptcy judges

(a)(1) A bankruptcy judge whose term of office expires pursuant to section 404(b) of the Act of November 6, 1978 (Public Law 95–598; 92 Stat. 2549), shall be eligible to retire and to receive retirement pay under subsection (c) of this section after attaining the age of sixty years, if such judge—

(A) has continued in service until the earlier of April 1, 1984, or the date his successor took office; and

(B) has served as a bankruptcy judge for at least eight years.

(2) A bankruptcy judge who is appointed under section 152 of this title to the district court shall be eligible to retire and to receive retirement pay under subsection (c) of this section after attaining the age of sixty years, if such judge has served as a bankruptcy judge for at least eight years.

(b) Any bankruptcy judge who becomes permanently disabled from performing the duties of the office shall retire.

(c)(1)(A) A bankruptcy judge who elects under subsection (d) of this section to receive retirement pay under this subsection and who retires under subsection (a) of this section shall receive retirement pay at a rate equal to 2.5 percent of his average pay times his years of service, except that the rate of such retirement pay shall not exceed 80 percent of the rate of salary payable to such judge on September 30, 1984.

(B) For purposes of this subsection, "average pay" means the largest annual pay rate resulting from averaging a judge's rates of basic pay in effect over any three consecutive years of creditable service, with each pay rate received during such period weighted by the time it was in effect.

(2) A bankruptcy judge who elects under subsection (d) of this section to receive treatment pay under this subsection and who retires under subsection (b) of this section shall receive retirement pay at a rate—

(A) equal to the rate of salary payable to such judge immediately preceding the date his retirement commences, for a comparable period, if before such retirement such judge serves as a bankruptcy judge not less than eight years; or

(B) equal to 50 percent of the rate of salary payable to such judge immediately preceding the date his retirement commences, for a comparable period if before such retirement such judge serves as a bankruptcy judge less than eight years;

except that the rate of such retirement pay shall not exceed 80 percent of the rate of salary payable to such judge on September 30, 1984.

(3)(A) Such retirement pay shall begin to accrue on the day following the day on which such bankruptcy judge becomes eligible to

retire under subsection (a) or (b) and shall continue to accrue during the remainder of the life of such judge.

(B) Retiremet pay accruing under this section shall be adjusted under section 135 of this title and paid in the same manner as the salary of a United States district judge.

(4) In computing the rate of retirement pay under this subsection, that portion of the aggregate number of years of service which is a fractional part of one year shall be eliminated if it is less than six months, or shall be counted as a full year if such part equals or exceeds six months.

(d)(1) A bankruptcy judge may elect to receive retirement pay under subsection (c) of this section by filing notice of such election in writing with the Director of the Administrative Office of the United States Courts. The Director shall transmit to the Office of Personnel Management a copy of each notice filed under this paragraph.

(2) Such election may be made by bankruptcy judge only during such judge's term of office.

(e) In the case of any bankruptcyjudge who files an election pursuant to subsection (d) of this section to receive retirement pay under subsection (c) of this section—

(1) no annuity or other payment shall be payable in any period during which such election is in effect, to such judge under subchapter III of chapter 83, title 5, United States Code (civil service retirement), with respect to any service performed by such judge (whether performed before or after such election is filed and whether performed as a bankruptcy judge or otherwise);

(2) no deduction for purposes of the Civil Service Retirement and Disability Fund shall be made from retirement pay payable to such judge under subsection (c) of this section or from any other salary, pay, or compensation payable to such judge for any period during which such election is in effect;

(3) for purposes of section 376(a) of this title, such judge shall be deemed to have notified, on the date such election is filed, the Director of the Administrative Office of the United States Courts of such judge's intention to come within the purview of section 376 of this title; and

(4) notwithstanding section 8342 of title 5, United States Code, the lump-sum credit of such judge computed under section 8331(8) of title 5, United States Code, shall be transferred from the individual account of such judge in the Civil Service Retirement and Disability Fund to the individual account of such judge in the Judicial Survivors' Annuities Fund. Any surplus moneys in such judge's account in the Judicial Survivors' Annuities Fund resulting from such transfer shall be retained in such account and administered under section 376 of this title.

(f) A bankruptcy judge who desires to reire under subsection (b) of this section shall furnish to the Director of the Administrative Office of the United States Courts a certificate of disability signed by the chief judge of the circuit in ehich such bankruptcy judge is serving.

(g)(1) A bankruptcy judge who files an election under subsection (d) of this section to receive retirement pay under subsection (c) of this section may revoke such election at any time before the first day on which retirement pay would begin to accrue with respect to such judge but for such revocation.

(2) Any revocation under this subsection of an election shall be made by filing notice of such revocation with the Office of Personnel Management. The Office of Personnel Management shall transmit to the Director of the Administrative Office of the United States Courts a copy of each notice filed under this paragraph.

(3) In the case f a bankruptcy judge who revokes under this subsection an election made under subsection (d) of this section—

(A) for purposes of this section, such judge shall be treated as not having filed such election;

(B) for purposes of section 376 of this title—

(i) such judge shall be treated as not having filed an election under subsection (a)(1) of such section, and

(ii) subsection (g) of such section shall not apply with respect to such judge, and the amount credited to such judge's account under subsection (e) of such section and subsection (e)(5) of this section, together with interest at 4 per centum per annum to December 31, 1947, and 3 per centum per annum thereafter, compounded on December 31, of each year to the date on which the revocation is filed, shall be returned to such judge; and

(C)(i) for purposes of subchapter III of chapter 83, title 5, United States Code (civil service retirement), no credit shall be allowed for service as a bankruptcy judge or otherwise unless with respect to such service such judge deposits in the Civil Service Retirement and Disability Fund the amount required by such subchapter, and

(iii) if such judge deposits the amount so required, then the Administrative Office of the United States Courts shall deposit in the Civil Service Retirement Disability Fund an amount equal to the amount it would have contributed to such fund but for the effectiveness of the election made by such judge under subsection (d) of tis section to receive retirement pay under subsection (c) of this section. Upon such deposit, service as a bankruptcy judge shall be treated as service with respect to which deductions and contributions had been made during the period of such service.

(h) Except as otherwise provided in this section, the provisions of subchapter III of chapter 83, title 5, United States Code (civil service retirement), including the provisions relating to the ded·uction and withholding of amounts from basic pay, salary, and compensation, shall apply with respect to service as a bankruptcy judge, together with other service as an officer or employee to whom such subchapter shall apply, as if this section had not been enacted.

* * * * * * *

CHAPTER 21—GENERAL PROVISIONS APPLICABLE TO COURTS AND JUDGES

Sec.
451. Definitions.
452. Courts always open; powers unrestricted by expiration of sessions.

Sec.
453. Oath of justices and judges.[1]
454. Practice of law by justices and judges.
455. Disqualification of justice, judge, or magistrate.
456. Traveling expenses of justices and judges; official duty stations.
457. Records; obsolete papers.
458. Relative of justice or judge ineligible to appointment.
459. Administration of oaths and acknowledgements.
460. Application to other courts.
461. Adjustments in certain salaries.
462. Court accommodations.
463. Expenses of litigation.

[1] So in original. Does not conform to section catchline.

* * * * * * *

§ 456. Traveling expenses of justices and judges; official duty stations

(a) * * *

* * * * * * *

(b) The official duty station of the Chief Justice of the United States, the Justices of the Supreme Courts of the United States, and the judges of the United States Court of Appeals for the District of Columbia Circuit, the United States Court of Appeals for the Federal Circuit, [and] the United States District Court for the District of Columbia, *and the United States Bankruptcy Court for the District of Columbia* shall be the District of Columbia.

* * * * * * *

(d) The official duty station of each district *and bankruptcy* judge shall be that place where a district court holds regular sessions at or near which the judge performs a substantial portion of his judicial work, which is nearest the place where he maintains his actual abode in which he customarily lives.

(e) The official duty station of a circuit judge shall be that place where a circuit [or district] *district, or bankruptcy* court holds regular sessions at or near which the judge performs a substantial portion of his judicial work, or that place where the Director provides chambers to the judge where he performs a substantial portion of his judicial work, which is nearest the place where he maintains his actual abode in which he customarily lives.

* * * * * * *

(g) Each circuit [or district] *district, or bankruptcy* judge whose official duty station is not fixed expressly by this section shall notify the Director of the Administrative Office of the United States Courts in writing of his actual abode and official duty station upon his appointment and from time to time thereafter as his official duty station may change.

* * * * * * *

CHAPTER 43—UNITED STATES MAGISTRATES

Sec.
631. Appointment and tenure.
632. Character of service.

633. Determination of number, locations, and salaries of magistrates.
634. Compensation.
635. Expenses.
636. Jurisdiction, powers, and temporary assignment.
637. Training.
638. Dockets and forms; United States Code; seals.
639. Definitions.

* * * * * * *

§ 636. Jurisdiction, powers, and temporary assignment

* * * * * * *

(b)(1) Notwithstanding any provision of law to the contrary—

(A) a judge may designate a magistrate to hear and determine any pretrial matter pending before the court, except a motion for injunctive relief, for judgment on the pleadings, for summary judgement, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action to dismiss for failure to state a claim upon which relief can be granted, [and to involuntarily dismiss an action.] *to involuntarily dismiss an action, and, in a case or proceeding under title 11, to allow or disallow a claim, a stay, an exemption, a priority, an account, a discharge, or any other application.* A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate's order is clearly erroneous or contrary to law.

(B) a judge may also designate a magistrate to conduct hearings, including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations for the disposition, by a judge of the court, of any motion excepted in subparagraph (A), of applications for posttrial relief made by individuals convicted of criminal offenses and of prisoner petitions challenging conditions of confinement.

(c) Notwithstanding any provision of law to the contrary—

(1) Upon the consent of the parties, a full-time United States magistrate or a part-time United States magistrate who serves as a full-time judicial officer may conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case, when specially designated to exercise such jurisdiction by the district court or courts he serves. Upon the consent of the parties, pursuant to their specific written request, any other part-time magistrate may exercise such jurisdiction, if such magistrate meets the bar membership requirements set forth in section 631(b)(1) and the chief judge of the district court certifies that a full-time magistrate is not reasonably available in accordance with guidelines established by the judicial council of the circuit. When there is more than one judge of a district court, designation under this paragraph shall be by the concurrence of a majority of all the judges of such district court, and when there is no such concurrence, then by the chief judge.

(2) If a magistrate is designated to exercise civil jurisdiction under paragraph (1) of this subsection, the clerk of court [shall, at the time the action is filed, notify the parties of

their right to consent to the exercise of such jurisdiction.] *shall, at the time the action is filed, notify the parties in a civil action of the availability of a magistrate to exercise such jurisdiction.* The decision of the parties shall be communicated to the clerk of court. Thereafter, neither the district judge nor the magistrate shall attempt to persuade or induce any party to consent to reference of any civil matter to a magistrate. Rules of court for the reference of civil matters to magistrates shall include procedures to protect the voluntariness of the parties' consent.

* * * * * * *

(g) A United States magistrate may perform the verification function required by section 4107 of title 18, United States Code. A magistrate may be assigned by a judge of any United States district court to perform the verification required by section 4108 and the appointment of counsel authorized by section 4109 of title 18, United States Code, and may perform such functions beyond the territorial limits of the United States. A magistrate assigned such functions shall have no authority to perform any other function within the territory of a foreign country.

(h) For purposes of this section, cases and proceedings filed in the district courts under section 1471 of this title shall be deemed to be civil actions.

* * * * * * *

CHAPTER 57—GENERAL PROVISIONS APPLICABLE TO COURT OFFICERS AND EMPLOYEES

Sec.
951. Oath of office of clerks and deputies.
[952. Repealed.]
953. Administration of oaths and acknowledgments.
954. Death of clerk; duties of deputies.
955. Practice of law restricted.
956. Powers and duties of clerks and deputies.
957. Clerks ineligible for certain offices.

* * * * * * *

§ 957. Clerks ineligible for certain offices

(a) A clerk of a district court *or bankruptcy court* or any of his deputies shall not be appointed a commissioner, master, referee or receiver in any case, unless there are special reasons requiring such appointment which are recited in the order of appointment.

(b) The clerk or assistant clerks of the Court of Customs and Patent Appeals shall not be appointed a commissioner, master of referee in any case.

* * * * * * *

CHAPTER 85—DISTRICT COURTS; JURISDICTION

* * * * * * *

1359. Parties collusively joined or made.
1360. State civil jurisdiction in actions to which Indians are parties.

1361. Action to compel an officer of the United States to perform his duty.

* * * * * * *

§ 1360. State civil jurisdiction in actions to which Indians are parties

(a) Each of the States [or Territories] listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State [or Territory] to the same extent that such State [or Territory] has jurisdiction over the other civil causes of action, and those civil laws of such State [or Territory] that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State [or Territory]:

State or Territory of	*Indian country affected*
Alaska	All Indian country [within the Territory] *within the State*
California	All Indian country within the State
Minnesota	All Indian country within the State, except the Red Lake Reservation
Nebraska	All Indian country within the State
Oregon	All Indian country within the State, except the Warm Springs Reservation
Wisconsin	All Indian country within the State

* * * * * * *

[CHAPTER 90—DISTRICT COURTS AND BANKRUPTCY COURTS

[Sec.
[1471. Jurisdiction.
[1472. Venue of cases under title 11.
[1473. Venue of proceedings arising under or related to cases under title 11.
[1474. Venue of cases ancillary to foreign proceedings.
[1475. Change of venue.
[1476. Creation or alteration of district of division.
[1477. Cure of waiver of defects.
[1478. Removal of the bankruptcy courts.
[1479. Provisional remedies; security.
[1480. Jury trials.
[1481. Powers of bankruptcy court.
[1482. Appeals.

[§ 1471. Jurisdiction.

[(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

[(b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceeding arising under title 11 or arising in or related to cases under title 11.

[(c) The bankruptcy court for the district in which a case under title 11 is commenced shall exercise all of the jurisdiction conferred by this section on the district courts.

[(d) Subsection (b) or (c) of this section does not prevent a district court or a bankruptcy court, in the interest of justice, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11. Such abstention or a decision not to abstain, it not reviewable by appeal or otherwise.

[(e) The bankruptcy court in which a case under title 11 in commenced shall have exclusive jurisdiction of all of the property, wherever located, of the debtor, as of the commencement of such case.

[§ 1472. Venue of cases under title 11

[Except as provided in section 1474 of this title, a case under title 11 may be commenced in the bankruptcy court for a district—

[(1) in which the domicile, residence, principal place of business, in the United States, or principal assets, in the United States, of the person or entity that is the subject of such case have been located for the 180 days immediately preceding such commencement, or for a longer portion of such 180-day period than the domicile, residence, principal place of business, in the United States, or principle assets, in the United States, of such person where located in any other district; or

[(2) in which there is pending a case under title 11 concerning such person's affiliate, general partner, or partnership.

[§ 1473. Venue of proceedings arising under or related to cases under title 11

[(a) Except as provided in subsections (b) and (d) of this section, a proceeding arising in or related to a case under title 11 may be commenced in the bankruptcy court in which such case is pending.

[(b) Except as provided in subsection (d) of this section, a trustee in a case under title 11 may commence a proceeding arising in or related to such case to recover a money judgment of or property worth, less than $1,000 or a consumer debt of less than $5,000, only in the bankruptcy court for the district in which a defendant resides.

[(c) Except as provided in section (b) of this section, a trustee in a case under title 11 may commence a proceeding arising in or related to such case as statutory successor to the debtor or creditors under section 41 or 544(b) of title 11 in the bankruptcy court for the district where the State or Federal court sits in which, under applicable nonbankruptcy venue provisions, the debtor or creditors, as the case may be, may have commenced an action on which such proceeding is based if the case under title 11 had not been commenced.

[(d) A trustee may commence a proceeding arising under title 11 or arising in or related to a case under title 11 based on a claim arising after the commencement of such case from the operation of the business of the debtor only in the bankruptcy court for the district where a State or Federal court sits in which, under applicable

nonbankruptcy venue provisions, an action on such claim may have been brought.

[(e) A proceeding arising in or related to a case under title 11, based on a claim arising after the commencement of such case from the operation of the business of the debtor, may be commenced against the representative of the estate in such case in the bankruptcy court for the district where the State or Federal court sits in which the party commencing such proceeding may, under applicable nonbankruptcy venue provisions, have brought an action on such claim, or in the bankruptcy court in which such case is pending.

[§ 1474. Venue of cases ancillary to foreign proceedings

[(a) A case under section 304 of title 11 to enjoin the commencement or continuation of an action or proceeding in a State or Federal court, or the enforcement of a judgment, may be commenced only in the bankruptcy court for the district where the State or Federal court sits in which is pending the action or proceeding against which the injunction is sought.

[(b) A case under section 304 of title 11 to enjoin the enforcement of a lien against property, or to require turnover of property of an estate, may be commenced only in the bankruptcy court for the district in which such property is found.

[(c) A case under section 304 of title 11, other than a case specified in subsection (a) or (b) of this section, may be commenced only in the bankruptcy court for the district in which is located the principal assets in the United States, of the estate that is the subject of such case.

[§ 1475. Change of venue

["A bankruptcy court may transfer a case under title 11 or a proceeding arising under or related to such a case to a bankruptcy court for another district, in the interest of justice and for the convenience of the parties.

[§ 1476. Creation or alteration of district or division

["Cases or proceedings pending at the time of the creation of a new district or division or transfer of a county or territory from one division or district to another may be tried in the district or division as it existed at the institution of the case or proceeding, or in the district or division so created or to which the country or territory is so transferred as the parties shall agree or the court direct.

[§ 1477. Cure or waiver of defects

[(a) The bankruptcy court of a district in which is filed a case or proceeding laying venue in the wrong division or district may, in the interest of justice and for the convenience of the parties, retain such case or proceeding, or may transfer, under section 1475 of this title, such case or proceeding to any other district or division.

[(b) Nothing in this chapter shall impair the jurisdiction of a bankruptcy court of any matter involving a party who does not interpose timely and sufficient objection to the venue.

[§ 1478. Removal to the bankruptcy courts

[(a) A party may remove any claim or cause of action in a civil action, other than a proceeding before the United States Tax Court or a civil action by a Government unit to enforce such government unit's police or regulatory power to the bankruptcy court for the district where such civil action is pending, if the bankruptcy courts have jurisdiction over such claim or cause of action.

[(b) The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground. An order under this subsection remanding a claim or cause of action, or a decision not so remanding, is not reviewable by appeal or otherwise.

[§ 1479. Provisional remedies; security

[(a) Whenever any action is removed to a bankruptcy court under section 1478 of this title, any attachment or sequestration of the goods or estate of the defendant in such action shall hold the goods or estate to answer the final judgment or decree in the same manner as they would have been held to answer final judgment or decree had it been rendered by the court from which the action was removed, unless the attachment or sequestration is invalidated under applicable law.

[(b) Any bond, undertaking, or security given by either party in an action prior to removal under section 1478 of this title shall remain valid and effectual notwithstanding such removal, unless such bond, undertaking, or other security is invalidated under applicable law.

[(c) All injunctions, orders, or other proceedings in an action prior to removal of such action under section 1478 of this title shall remain in full force and effect until dissolved or modified by the bankruptcy court.

[§ 1480. Jury trials

[(a) Except as provided in subsection (b) of this section, this chapter and title 11 do not affect any right to trial by jury, in a case under title 11 or in a proceeding arising under title 11 or arising in or related to a case under title 11, that is provided by any statute in effect on September 30, 1979.

[(b) The bankruptcy court may order the issues arising under section 303 of title 11 to be tried without a jury.

[§ 1481. Powers of bankruptcy court

[A bankruptcy court shall have the powers of a court of equity, law, and admirality, but may not enjoin another court or punish a criminal contempt not committed in the presence of the judge of the court or warranting a punishment of imprisonment.

[§ 1482. Appeals

[(a) Panels designated under section 160(a) of this title shall have jurisdiction of appeals from all final judgments, orders, and decrees of bankruptcy courts.

[(b) Panels designated under section 160(a) of this title shall have jurisdiction of appeals from interlocutory judgments, orders,

and decrees of bankruptcy courts, but only by leave of the panel to which the appeal is taken.]

CHAPTER 90—DISTRICT COURTS AND BANKRUPTCY COURTS

Sec.
1471. Jurisdiction.
1472. Venue of cases under title 11.
1473. Venue of proceedings arising under or related to cases under title 11.
1474. Venue of cases ancillary to foreign proceedings.
1475. Change of venue.
1476. Removal of bankruptcy cases.
1477. Jury trials.

§ 1471. Jurisdiction

(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

(b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

(c) All cases under title 11 and all civil proceedings arising under title 11, or arising in or related to cases under title 11 shall be referred to the bankruptcy court for the district. The bankruptcy court for the district in which a case or proceeding under title 11 is pending shall have the authority to exercise all of the jurisdiction conferred on the district courts by subsections (a) and (b) of this section, except where inconsistent with the Constitution, unless such case or proceeding has been recalled by the district court.

(d) The district court on its own motion may recall any case or proceeding referred to the bankruptcy court under subsection (c) of this section.

(e)(1) Any party, or the bankruptcy judge, may file a petition for recall of any civil case or proceeding referred to the bankruptcy court under subsection (c). Such petition shall be filed with the clerk of the district court for the district, and shall contain a short and plain statement of the grounds for recall. Written notice of the filing of such a petition shall be given promptly to all parties.

(2) Recall of a proceeding pursuant to such petition may be granted in the discretion of the district court, except that recall shall be granted—

> *(A) with respect to a proceeding involving a claim or cause of action which is not one arising under title 11; or resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.*

(f) A case or proceeding which has been recalled by the district court under this section shall be determined by the district court. The court, in its discretion, may determine the entire case. In any case or proceeding before the district court pursuant to subsection (d) or (e), such court may—

> *(1) designate any bankruptcy judge within the district to serve as a special master to hear such case or proceeding and to make*

findings and recommendations pursuant to the Federal Rules of Civil Procedure, notwithstanding Rule 53(b) thereof, or

(2) refer such case or proceeding to a United States magistrate in accordance with the provisions of section 636 of this title as applicable to civil proceedings generally, or to a bankruptcy judge, who shall exercise all of the jurisdiction and powers of a United States magistrate under section 636.

For purposes of this section, the district court shall use the standard of review provided in Rule 53(e)(2) of the Federal Rules of Civil Procedure or section 636(b) of this title, as the case may be, unless the court, in its designation of the special master or its referral to the magistrate orders otherwise.

(g) Notwithstanding the provisions of subsection (e), and subject to a right to appeal pursuant to section 1334 of this title, any party to a case or proceeding under subsection (a) or (b) of this section shall be deemed to have consented to the exercise of jurisdiction by the bankruptcy court to determine the entire matter if the party has failed to file a timely petition pursuant to subsection (e)(1) of this section. Such a petition must be filed together with the initial pleading of the party.

(h)(1) Nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts and respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11. Such abstention, or a decision not to abstain, is not reviewable by appeal or otherwise.

(2) In the case of a proceeding involving the debtor which is based upon a claim or cause of action arising under State law, the Court shall, upon proper motion, abstain from adjudicating such claim in the bankruptcy proceeding where an action to adjudicate such claim has been or will be instituted and timely prosecuted in a State forum of appropriate jurisdiction: Provided, That this paragraph shall not be construed to otherwise limit the applicability of the stay provided for by section 362 of title 11, United States Code, as such section governs an action affecting the property of the estate in bankruptcy.

(3) A motion to abstain pursuant to this subsection shall be filed within 10 days of the granting of a petition to recall pursuant to subsection 1741(e).

(i) Subject to the provisions of this section, the bankruptcy court in which a case under title 11 is commenced or pending may exercise jurisdiction over all property, wherever located, of the debtor or the estate as of the date of the commencement of such case.

§ 1472. Venue of cases under title 11

Except as provided in section 1474 of this title, a case under title 11 may be commenced in the district court for a district—

(1) in which the domicile, residence, principal place of business, in the United States, or principal assets, in the United States, of the person or entity that is the subject of such case have been located for the 180 days immediately preceding such commencement, or for a longer portion of such 180-day period than the domicile, residence, principal place of business, in the

United States, or principal assets, in the United States, of such person were located in any other district; or

(2) in which there is pending a case under title 11 concerning such person's affiliate, general partner, or partnership.

§ 1473. Venue of proceedings arising under or related to cases under title 11

(a) Except as provided in subsections (b) and (d) of this section, a proceeding arising in or related to a case under title 11 may be commenced in the district court in which such case is pending.

(b) Except as provided in subsection (d) of this section, a trustee in a case under title 11 may commence a proceeding arising in or related to such case to recover a money judgment of, or property worth, less than $1,000 or a consumer debt of less than $5,000, only in the district court for the district in which the defendant resides.

(c) Except as provided in subsection (b) of this section, a trustee in a case under title 11 may commence a proceeding arising in or related to such case as statutory successor to the debtor or creditors under section 541 or 544(b) of title 11 in the district court for the district where the State or Federal court sits in which, under applicable nonbankruptcy venue provisions, the debtor or creditors, as the case may be, may have commenced an action on which such proceeding is based if the case under title 11 had not been commenced.

(d) A trustee may commence a proceeding arising under title 11 or arising in or related to a case under title 11 based on a claim arising after the commencement of such case from the operation of the business of the debtor only in the district court for the district where a State or Federal court sits in which, under applicable nonbankruptcy venue provisions an action on such claim may have been brought.

(e) A proceeding arising in or related to a case under title 11, based on a claim arising after the commencement of such case from the operation of the business of the debtor, may be commenced against the representative of the estate in such case in the district court for the district where the State or Federal court sits in which the party commencing such proceeding may, under applicable nonbankruptcy venue provisions, have brought an action on such claim, or in the district court in which such case is pending.

§ 1474. Venue of cases ancillary to foreign proceedings

(a) A case under section 304 of title 11 to enjoin the commencement or continuation of an action or proceeding in a State or Federal court, or the enforcement of a judgment, may be commenced only in the district court for the district where the State or Federal court sits in which is pending the action or proceeding against which the injunction is sought.

(b) A case under section 304 of title 11 to enjoin the enforcement of a lien against property, or to require turnover of property of an estate, may be commenced only in the district court for the district in which such property is found.

(c) A case under section 304 of title 11, other than a case specified in subsection (a) or (b) of this section, may be commenced only in the district court for the district in which is located the principal

assets, in the United States, of the estate that is the subject of such case.

§ 1475. Change of venue

A district court may transfer a case or proceeding under title 11 to a district court for another district, in the interest of justice or for the convenience of the parties.

§ 1476. Removal of bankruptcy cases

(a) A party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power, to the district court for the district where such civil action is pending, if the district courts have jurisdiction over such claim or cause of action, under section 1471 of this title.

(b) The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground. An order under this subsection remanding a claim or cause of action, or a decision to not remand, is not reviewable by appeal or otherwise.

§ 1477. Jury trials

(a) Except as provided in subsection (b) of this section, this chapter and title 11 do not affect any right to trial by jury.

(b) The district court may order the issues arising under section 303 of title 11 to be tried without a jury.

CHAPTER 153—HABEAS CORPUS

* * * * * * *

§ 2256. Habeas corpus from bankruptcy courts

[A bankruptcy court] *A district court* may issue a writ of habeas corpus—

(1) when appropriate to bring a person before [the court] *the bankruptcy court*—

(A) for examination;

(B) to testify; or

(C) to perform a duty imposed on such person under this title; or

(2) ordering the release of a debtor in a case under title 11 in custody under the judgment of a Federal or State court if—

(A) such debtor was arrested or imprisoned on process in any civil action;

(B) such process was issued for the collection of a debt—

(i) dischargeable under title 11; or

(ii) that is or will be provided for in a plan under chapter 11 or 13 of title 11; and

(C) before the issuance of such writ, notice and a hearing have been afforded the adverse party of such debtor in custody to contest the issuance of such writ.

* * * * * * *

TITLE 5

CHAPTER 87—LIFE INSURANCE

Sec.
8701. Definition.
8702. Automatic coverage.
8703. Benefit certificate.
8704. Group insurance; amounts.
8705. Death claims; order of precedence; escheat.
8706. Termination of [insurance.] *insurance, assignment of ownership.*
8707. Employee deductions; withholding.
8708. Government contributions.
8709. Insurance policies.
8710. Reinsurance.
8711. Basic tables of premium rates.
8712. Annual accounting; special contingency reserve.
8714. Employees' Life Insurance Fund.
8714a. Optional insurance.
8714b. Additional optional life insurance.
8714c. Opptional life insurance on family members.
8715. Jurisdiction of courts.
8716. Regulations.

§ 8701. Definition

(a) For the purpose of this chapter, "employee" means—

(1) an employee as defined by section 2105 of this title;

(2) a Member of Congress as defined by section 2106 of this title;

(3) a Congressional employee as defined by section 2107 of this title;

(4) the President;

(5) a justice or judge of the United States appointed to hold office during good behavior (i) who is in regular active judicial service, or (ii) who is retired from regular active service, under sections 371(b) or 372(a) of title 28, United States Code, or (iii) who has resigned the judicial office under section 371(a) of title 28 with the continued right during the remainder of his lifetime to receive the salary of office at the time of his resignation;

(6) [(5)] an individual employed by the government of the District of Columbia;

(7) [(6)] an individual employed by Gallaudet College;

(8) [(7)] an individual employed by a county committee established under section 590h(b) of title 16; and

(9) [(8)] an individual appointed to a position on the office staff of a former President under section 1(b) of the Act of August 25, 1958 (72 Stat. 838); * * *

* * * * * * *

§ 8706. Termination of [Insurance] *insurance, assignment of ownership*

* * * * * * *

(e) If the insurance of an employee stops because of separation from the service or suspension without pay, and the separation or suspension is thereafter officially found to have been erroneous, the employee is deemed to have been insured during the period of erroneous separation or suspension. Deductions otherwise required

by section 8707 of this chapter shall not be withheld from any backpay awarded for the period of separation or suspension unless death or accidental dismemberment of the employee occurs during such period.

(f) Under regulations prescribed by the Office, each policy purchase under this chapter shall provide that an insured employee may make an irrevocable assignment of the employee's incidents of ownership in the policy.

* * * * * * *

§ 8714a. Optional insurance

* * * * * * *

(c)(1) The optional insurance on an employee stops on his separation from service, 12 months after discontinuance of his pay, or on his entry on active duty or active duty for training, as provided in section 8706(a) and 8706(c) of this title.

(2)(A) In the case of any employee who retires on an immediate annuity and has been insured under this section throughout—

(i) the 5 years of service immediately preceding the date of such retirement, or

(ii) the full period or periods of service during which the employee was entitled to be insured, if less than 5 years,

the amount of optional life insurance only which has been in force throughout such period may be continued, under conditions determined by the Office.

(3) Notwithstanding paragraph (c)(1) of this section, a justice or judge of the United States as defined by section 8701(a)(5) of this title who resigns his office without meeting the requirements of section 371(a) of title 28, United States Code, for continuation of the judicial salary shall have the right to convert regular optional life insurance coverage issued under this section during his judicial service to an individual policy of life insurance under the same conditions approved by the Office governing conversion of basic life insurance coverage for employees eligible as provided in section 8706(a) of this title.

* * * * * * *

§ 8714b. Additional optional life insurance

* * * * * * *

(c)(1) The additional optional insurance elected by an employee pursuant to this section shall stop on separation from service, 12 months after discontinuance of pay, or on entry on active military duty or active duty for training, subject to provision for a 31-day temporary extension of insurance coverage and for conversion to an individual policy, as provided in sections 8706(a) and 8706(c) of this title. *A justice or judge of the United States as defined by section 8701(a)(5) of this title who resigns his office without meeting the requirements of section 371(a) of title 28, United States Code, for continuation of the judicial salary shall have the right to convert additional optional life insurance coverage issued under this section to an individual policy of life insurance under the same conditions approved by the Office governing conversion of basic life insurance*

coverage for employees eligible as provided in section 8706(a) of this title.

* * * * * * *

(Public Law 95–598; 92 Stat. 2549)

* * * * * * *

[SEC. 202. Section 291(c) of title 28 of the United States Code is amended by inserting "or bankruptcy" immediately after "to hold a district".]

* * * * * * *

[SEC. 209. Section 332(d) of title 28 of the United States Code is amended by inserting "and bankruptcy judges" immediately after "The district judges".]

* * * * * * *

[SEC. 211. Section 376(a)(2)(A) of title 28 of the United States Code is amended by inserting ", or (iii) in the case of a bankruptcy judge, after retirement under section 337 of this title" immediately before the semicolon.]

* * * * * * *

[SEC. 215. Section 456 of title 28 of the United States Code is amended—

[(1) by striking out "and the United States District Court for the District of Columbia," and inserting in lieu thereof "the United States District Court for the District of Columbia, and the United States Bankruptcy Court for the District of Columbia,";

[(2) by striking out "and district" and inserting in lieu thereof ", district and bankruptcy"; and

[(3) by striking out "and each district judge" and inserting in lieu thereof ", each district judge; and each bankruptcy judge".]

* * * * * * *

[SEC. 234. Section 957(a) of title 28 of the United States Code is amended by inserting "or bankruptcy court" immediately after "district court".]

* * * * * * *

[SEC. 239. Section 1360(a) of title 28 of the United States Code is amended by striking out "within the Territory" and inserting in lieu thereof "within the State".]

* * * * * * *

SEC. 404. (a) The courts of bankruptcy, as defined under section 1(10) of the Bankruptcy Act, created under section 2a of the Bankruptcy Act, and existing on September 30, 1979, shall continue through March 31, 1984, to be the courts of bankruptcy for the purposes of this Act and the amendments made by this Act. Each of the courts of bankruptcy so continued shall constitute a separate department of the district court that is such court of bankruptcy under the Bankruptcy Act.

(b) The term of a referee in bankruptcy who is serving on the date of enactment of this Act is extended to [and expires on] March 31, 1984 or when his successor takes office *whichever is later, but not later than October 1, 1984.* During the period commencing on October 1, 1979, and ending on March 31, 1984 *except as such date may be extended to October 1, 1984, for referees, pursuant to this subsection.* (hereinafter in this title referred to as "the transition period"). unless such referee is found to be not qualified by the Chief Judge of the Circuit Court after consultation with a merit screening committee established as provided in subsection (c) of this section, such a referee in bankruptcy upon the expiration of his appointed term as referee shall have the title of United States bankrupcty judge, and shall serve in the court of bankruptcy continued under subsection (a) of this section that appointed such United States bankruptcy judge, in the manner prescribed by this title. Section 8335(a) of title 5 of the United States Code shall not apply in respect of United States bankruptcy judges during the transition period.

SEC. 405. (a)(1) All cases commenced under title 11 of the United States Code during the transition period shall be referred to the United States bankruptcy judges. The United States bankruptcy judges may exercise in such cases the jurisdiction and powers conferred by subsection (b) of this section on the courts of bankruptcy continued by section 404(a) of this Act, and all proceedings in such cases shall be before the United States bankruptcy judges, except—

* * * * * * *

(b) During the transition period, the amendments made by sections [241,] 243, 250, and 252 of this Act *and the Bankruptcy Court and Federal Judgeship Act of 1983* shall apply to the courts of bankruptcy continued by section 404(a) of this Act the same as such amendments apply to the United States bankruptcy court established under section 201 of this Act.

(c)(1) During the transition period, an appeal from a judgment, order, or decree of a United States bankruptcy judge shall be—

(A) if the circuit council of the circuit in which the bankruptcy judge sits so orders for the district in which the bankruptcy judge sits, then to a panel of three bankruptcy judges appointed in the manner prescribed by section 160 of title 28 of the United States Code, as added by section 201 of this Act;

(B) if the parties to the appeal agree to a direct appeal to the court of appeals for such circuit, then to such court of appeals; or

(C) to the district court for the district in which the bankruptcy judge sits.

(2) During the transition period, the jurisdiction of the district courts, the courts of appeals, and panels of bankruptcy judges to hear appeals shall be the same as the jurisdiction of such courts and panels granted under the amendments made by sections 236, 237, 238, and [241 of this Act] *102 of the Bankruptcy Court and Federal Judgeship Act of 1983* to hear appeals from the judgments,

orders, and decrees of the bankruptcy courts established under section 201 of this Act.

* * * * * * *

XIII. Conclusion

The Committee on the Judiciary therefore recommends the passage of S. 1013 in order to create a constitutional system of bankruptcy courts.

XIV. APPENDIX

U.S. COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

Number of Judgeships Currently Authorized: 11
Number of Additional Judgeships Recommended: 1

Located at the seat of the federal government, the Court of Appeals for the District of Columbia inevitably receives a significant amount of its caseload from federal administrative agencies headquartered in the area. Administrative appeals filed in this court numbered 504 in 1982 and represented 34.8 percent of the incoming caseload. Civil cases involving the United States as plaintiff or defendant made up another 41.6 percent of the caseload. There were 1,447 appeals filed in this court in 1982, averaging 391 appeals per three-judge panel.

The number of cases terminated by this court has increased steadily in the last four years. In 1982 there were 1,656 appeals terminated, 14 percent more than the number of new appeals filed during the year. The resulting pending caseload was 1,386 appeals, 378 per panel. The median time between filing of the complete record with the court and final disposition after hearing or submission dropped to 9.9 months in 1982, the lowest figure in the last six years. Increased case participations by the three senior judges of the circuit accounted for part of the rise in terminations in 1982. The three senior judges were involved in 153 case participations, or 8.1 percent of all participations in the circuit. That significant contribution should not be regarded as a continuing regular resource for the court.

Due to the nature of the caseload which includes many unique cases involving complex legal, economic and social issues of national importance and a large backlog of pending appeals, this court requires one additional judgeship.

U.S. COURT OF APPEALS FOR THE FIRST CIRCUIT

Number of Judgeships Currently Authorized: 4
Number of Additional Judgeships Recommended: 2

For the fourth consecutive year, the number of appeals filed in this court has increased. There were 563 appeals filed in 1978. By 1982, the number had increased 84.7 percent, to 1,040 appeals. This was the largest gain among all the circuits. Although case terminations, too, have risen steadily, they have not kept pace with filings. The pending caseload of 554 appeals on June 30, 1982 is the highest ever recorded by this court. These workload levels are overwhelmingly higher than the 1980 levels which justified the one additional judgeship recommended by the Judicial Conference in 1980 and approved by the Senate Judiciary Committee in September 1982.

With only four authorized judgeship positions, the court must rely heavily on its one senior judge and visiting judges to make up a second three-judge panel to handle the caseload. In 1982, the one senior judge reported 67 case participations, or 5.1 percent. Visiting judges reported 295 case participations, accounting for 15.7 percent of the total case participations. Due that high level of "extra assistance", this court's 1982 termination rate of 755 appeals per three-judge panel ranks second only to termination rate of the Fourth Circuit Court of Appeals.

Workload statistics of 800 appeals filed per panel, 755 appeals terminated per panel, and 58 signed opinions per judgeship, are clearly in excess of what a court can reasonably be expected to manage. Indeed, the pending caseload is rising at an alarming rate (almost 12 percent from 1981 to 1982).

This court requires two additional judgeship positions to maintain its current performance levels and to prevent a large backlog of appeals from developing.

U.S. COURT OF APPEALS FOR THE SECOND CIRCUIT

Number of Judgeships Currently Authorized: 11
Number of Additional Judgeships Recommended: 2

With 2,827 new appeals, the Second Circuit Court of Appeals had one of the heaviest caseloads among all of the circuits in 1982. The circuit ranked third among all circuit courts, with 764 appeals filed per three-judge panel. Judgeship vacancies during 1982 amounted to 27 months, and their effect can easily be seen in the lower level of appeals terminations in 1982. There were 817 appeals terminated per panel in 1981, compared to 681 terminated per panel in 1982. Even so, the Second Circuit ranks first in the nation in median time between filing of the complete record and disposition, 4.2 months in 1982, compared with 8.9 months nationwide.

Assistance from senior judges has always been substantial in this court, and 1982 was no exception. The six resident senior circuit judges recorded 767 case participations, 22.9 percent of the court's total case participations in 1982. This court cannot continue to rely on its senior judges to such an extent.

In prior years appeals terminations equalled, and sometimes surpassed, appeals filings, resulting in one of the lowest pending caseloads among the circuit courts. The heavy workload in this court, however, insures that any slowdown in processing appeals will dramatically increase the pending caseload. That workload, combined with a large number of vacant judgeship months in 1982, resulted in a 44 percent increase in the number of pending appeals.

The Judicial Conference recommended in 1980, and the Senate Judiciary Committee approved in September 1982, two additional judgeships based upon the 1980 workload. Since that time, the workload levels have increased substantially. In order to maintain its excellent performance record, and in order to keep the backlog of appeals at its current low level, this court requires two additional judgeships.

U.S. COURT OF APPEALS FOR THE THIRD CIRCUIT

Number of Judgeships Currently Authorized: 10
Number of Additional Judgeships Recommended: 2

New appeals to the Third Circuit Court of Appeals have risen steadily since 1978. In 1982, new appeals filed rose 8.8 percent, to 664 per panel, ranking this circuit sixth among the twelve regional circuit courts of appeals in cases filed.

Terminations also rose substantially (20.4 percent), to 686 per panel, due in part to contributions by the court's three senior judges. Senior judges participated in 11.7 percent of all cases orally argued or submitted on briefs. Age or illness may well prevent the senior judges from being able to provide this level of assistance in the future. Visiting judge participation fell from 14.0 percent in 1981 to 9.6 percent in 1982, further increasing the burden on this court's active judges.

Current workload levels in this court are significantly higher than in 1980 when the Judicial Conference first recommended two additional judgeships. Those judgeships were approved by the Senate Judiciary Committee in September 1982 on the basis of the 1980 workload.

The addition of two judgeships would reduce the number of appeals filed to 548 per panel. These two judgeships will allow the Third Circuit to maintain its high termination rate and to keep pace with an ever-increasing workload.

U.S. COURT OF APPEALS FOR THE FOURTH CIRCUIT

Number of Judgeships Currently Authorized: 10
Number of Additional Judgeships Recommended: 1

The Fourth Circuit recorded an 18.0 percent increase in new filings in 1982, the largest percentage increase among the twelve regional circuit courts of appeals. The number of appeals filed per panel was 803, ranking this circuit court first nationwide. This court also ranked first in the number of terminations per panel. With the help of three senior judges, the termination rate rose a remarkable 25.9 percent to 810 per panel. This increase was almost entirely accounted for by the circuit's own judges. Visiting judges participated in only 6.1 percent of the cases, much less than the national average of 12.3 percent. As a result of the termination rate, the pending caseload levelled off; however, it remains above the national average at 521 pending appeals per panel.

The workload levels of this circuit justify the authorization of another judgeship. The addition of one judgeship would reduce this circuit's filings to 723 per panel and its pending caseload to 474 per panel. The Fourth Circuit needs this additional judgeship to reduce workload to a manageable level and to continue its high level of terminations.

U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT

Number of Judgeships Currently Authorized: 14
Number of Additional Judgeships Recommended: 2

In the year ended June 30, 1982, filings in the Fifth Circuit Court of Appeals rose to 2,715, or 578 per panel. Visiting judges participated in only 2.5 percent of the cases orally argued or submitted on briefs, the lowest percentage nationwide. With the help of five senior judges, however, this court terminated 590 cases per panel, with a median disposition time of 8.6 months, slightly better than the national average. The pending caseload of 474 per judgeship ranks seventh among all courts of appeals.

The Fifth Circuit originally did not request additional judgeships during the Judicial Conference 1982 Judgeship Survey, because it wanted time to evaluate the impact of the reorganization of the court under the Fifth Circuit Court of Appeals Reorganization Act of 1980. After careful assessment, the court and the Judicial Conference recommend the authorization of two additional judgeships. This would give the Fifth Circuit a complement of 16 judgeships, reduce filings to 509 per panel, and reduce the number of pending appeals to 414 per panel. Two additional judgeships are needed to meet the continuing rise in the number of appeals filed.

U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT

Number of Judgeships Currently Authorized: 11
Number of Additional Judgeships Recommended: 4

Appeals to the Sixth Circuit have risen steadily since 1979. During the year ended June 30, 1982, there were 2,599 appeals filed in this court - 702 appeals per panel. Terminations did not keep pace with the level of filings until 1982, and a large backlog of appeals developed. This court's pending caseload of 670 appeals per three-judge panel was the largest among all courts in 1982.

This court has been plagued with vacancies due to retirement or resignation in recent years. These vacancies have reduced the court's ability to handle the current caseload as well as the backlog. Despite vacancies the court has increased the number of cases terminated with the help of senior and visiting judges. Resident active judges now account for only 67.8 percent of case participations, compared to 78.6 percent in 1981 and 86.6 percent in 1980. The five resident senior judges handled 15.6 percent of the case participations, and visiting judges made up the remaining 16.6 percent.

In 1982 the court terminated 728 appeals per panel, ranking fourth in the nation. A large number of these, 362 per panel, were terminated after oral hearing or submission on briefs. The median time for processing appeals was 13.7 months in 1982 — the longest of all the courts of appeals — significantly higher than the national figure of 8.9 months from filing the complete record to disposition.

In 1980, the Judicial Conference recommended, and in September 1982 the Senate Judiciary Committee approved, two additional judgeships based upon 1980 data. The workload of the court has increased since. Four additional judgeships are recommended to enable the court to continue its high level of performance.

U.S. COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Number of Judgeships Currently Authorized: 9
Number of Additional Judgeships Recommended: 2

Compared to 1977, overall filings during the management year ended June 30, 1982 have increased by 55.1 percent. The 717 appeals filed per panel during 1982 ranks this circuit fourth among all courts of appeals. Only with an 18.8 percent contribution from visiting judges, and an 8.2 percent contribution from two senior judges, was this court able to manage a termination rate of 710 cases per panel in 1982. The high disposition rate was not enough, however, to offset a growing backlog of cases. The 572 pending appeals is well above the national average of 489 and ranks the circuit third highest in pending caseload.

The current workload of this court is substantially greater than in 1980: based upon 1980 workload, the Judicial Conference recommended and the Senate Judiciary Committee in September 1982 approved two additional judgeships for this court.

The number of new filings per panel (717), terminations per panel (710), and pending cases per panel (572) all justify the need for additional judgeship resources. With the two additional judgeships requested, the number of filings per panel would be 586 and pending appeals would drop to 486 per panel, a workload more comparable to other courts of appeals. The additional judgeships would also allow the court to handle its caseload without extensive dependence upon assistance from visiting judges.

U.S. COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Number of Judgeships Currently Authorized: 9
Number of Additional Judgeships Recommended: 1

The Eighth Circuit has experienced annual increases in case filings of 19 percent in 1981 and 17 percent in 1982. The number of appeals filed per panel was 532 in 1982. Although this was the second lowest number per panel among all courts last year, it is much higher than the 370 appeals per panel in 1978, which prompted Congress to authorize one additional judgeship for the Circuit under the 1978 Omnibus Judgeship Act.

The Circuit has worked diligently to keep its caseload current. The median time from the filing of the complete record to disposition of the case was only 5.5 months in 1982, the second fastest in the country. This was only achieved with a 15 percent participation rate by visiting judges, higher than the national rate of 12 percent. This extensive use of visiting judges is only a stop-gap measure; it is not an acceptable long-term solution to rising caseloads.

The Eighth Circuit does not receive extensive senior judge assistance. The Circuit's three senior judges accounted for only 8 percent of the case participations in the year ended June 30, 1982. The number of senior judges available to help dropped from 3 to 2 on January 12, 1983.

The Judicial Conference has recommended that one additional judgeship be created for this court. The increasing rate of filings is the second highest in the country, and there is no reason to believe that filings will decrease, or even level off, in the future. Given the current rate of filings alone, this court requires one additional judgeship.

U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT

Number of Judgeships Currently Authorized: 23
Number of Additional Judgeships Recommended: 5

Filings in the Ninth Circuit Court of Appeals increased by 3.0 percent to 570 per panel in 1982, after experiencing larger annual increases (24 percent and 14 percent) in 1980 and 1981. Although the court has decreased its pending caseload to 553 cases per panel, it still has the fourth largest backlog among the 12 courts of appeals.

This court has reduced time required for processing appeals. The median time from the filing of the complete record to disposition dropped from above 17 months in 1980 and 1981 to 13.3 months last year. This improvement was accomplished with a senior judge participation rate of only 6.5 percent. The visiting judge participation, however, was 17.4 percent. Although that visiting judge participation rate is much lower than in previous years, it is still the second highest nationwide and is unacceptably high.

The Judicial Conference in 1980 recommended, and the Senate Judiciary Committee in September of 1982 approved, three temporary judgeships for this court based upon the pending caseload in 1980. Since then, the incoming caseload has increased substantially. As a result, the Judicial Conference is now recommending five additional permanent judgeships for the court, rather than the three temporary positions previously recommended. The addition of these judgeships will alleviate the heavy burden of incoming caseload, allow continuing progress in reducing backlog, and reduce the need to have so many visiting judges to assist with the workload.

The addition of five judgeships to this court would drop the 1982 levels of filings and pending cases to 470 and 454 per panel, levels which the Judicial Conference recommends as necessary for efficient performance.

U.S. COURT OF APPEALS FOR THE TENTH CIRCUIT

Number of Judgeships Currently Authorized: 8
Number of Additional Judgeships Recommended: 2

A record number of appeals were filed in the Tenth Circuit in 1982. There were 1,784 cases filed, 661 appeals per three-judge panel. This workload is 27.2 percent greater than in 1980, when the Judicial Conference recommended one additional judgeship, which the Senate Judiciary Committee approved in September 1982. Terminations in 1982 were also at a record level, with 745 appeals terminated per panel. This increase is partly due to a number of cases which were terminated in prior years, but not reported until 1982. Even excluding those cases, however, the court terminated significantly more cases than in prior years.

The increase in terminations has been achieved by the extraordinary effort of the Tenth Circuit judges, and through numerous improvements in the administration of the court. It is not reasonable to expect further extensive improvements in the immediate future. Judges are now operating at peak capacity. Senior judges are not able to participate in case disposition to a significant degree because of age, ill health, and location at a distance from the main headquarters of the court. In 1982, resident senior judges accounted for only 5.4 percent of the court's case participations, compared to a national average of 9.9 percent. The court received very little assistance from visiting judges, who handled only 5.4 percent of case participations in 1982.

If this court is to continue its high level of terminations and prevent further buildup of the pending caseload, two additional judgeships are required. With ten judges, the court will be in a position to manage a growing caseload and reduce the backlog of appeals.

U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ALABAMA

Number of Judgeships Currently Authorized: 2
Number of Additional Judgeships Recommended: 1

Total filings in this district increased 31.9 percent in 1982, to 678 per judgeship, third highest among the 94 district courts. Although weighted filings are considerably lower at 542 per judgeship, this figure still ranks eleventh nationwide. Terminations per judgeship rose 12.8 percent to 546, well above the national average of 409 per judgeship. The court now receives the services of two senior judges who make a substantial contribution to the work of the court. However, the district cannot depend on the continuing services of those senior judges. Even with their assistance the court could not keep pace with the filings in 1982. As a result, the pending caseload grew for the eighth consecutive year.

The number of pending cases rose substantially (37.8 percent) during 1982, totalling 483 per judgeship. As a result of the heavy caseload, the median disposition time for criminal cases rose from 3.1 months in 1981 to 5.1 months in 1982, and the median time from issue to trial in civil cases rose significantly from nine months in 1981 to 12 months in 1982. The number of trials completed per judgeship is high at 61, further burdening the court's judges.

In addition to the large caseload, this court faces a problem unique to the smaller districts. Any vacancy, illness or protracted trial has the potential to reduce available judgepower by as much as 50 percent, which is a much greater impact than similar situations have on larger courts. Due to the large volume of cases, the growing workload, and heavy trial calendar, this court needs one additional judgeship.

U.S. DISTRICT COURT FOR THE DISTRICT OF ALASKA

Number of Judgeships Currently Authorized: 2
Number of Additional Judgeships Recommended: 1

During the year ended June 30, 1982, total filings in this district were 319 per judgeship and weighted filings were virtually the same at 316 per judgeship. The pending caseload, however, is much higher at 433 per judgeship. This represented a 23.0 percent increase over 1981 despite the help of three visiting judges for a total of 46 days. The current incoming caseload in this district is approximately the same as in 1980; while the pending caseload has grown substantially. The workload for 1980 was the basis for the Judicial Conference recommendation in 1980, and the Senate Judiciary Committee's approval in September 1982, of one additional judgeship for this court.

The District of Alaska has unique geographical problems. There are five places of holding court at substantial distances from each other requiring a great amount of travelling from this district's two judges. The weather conditions and the lack of transportation in some areas of the state further restrict the court's ability to handle the workload.

In addition, the caseload of the district is complex and some issues, such as those arising under the Alaska Native Land Claims Settlement Act of 1971 and the Fishery Conservation and Management Act of 1976, are unique to this district. Because of the complexity of the caseload, the small size of the court (only two judges) and the large area covered by the district, any vacancy, illness, or protracted trial affects this court more drastically than perhaps any other district.

Two judges are not enough to adequately cover Alaska's 589,757 square miles. It is necessary, therefore, to authorize one additional judgeship to meet the demands caused by Alaska's geography as well as its complex and rapidly rising pending caseload.

U.S. DISTRICT COURT FOR THE WESTERN DISTRICT OF ARKANSAS

Number of Judgeships Currently Authorized: 2
Number of Additional Judgeships Recommended: 1 temporary

Filings continue to rise rapidly totalling 1,070 (535 per judgeship) in 1982, a 32.6 percent increase over the previous year. Weighted filings remain considerably lower but still substantial at 400 per judgeship. All caseload levels for this district, with the exception of the pending caseload, are substantially above the 1980 levels which served as the basis for one temporary judgeship recommended by the Judicial Conference in 1980, and approved by the Senate Judiciary Committee in September 1982.

With the help of five visiting judges, terminations rose 43.9 percent in 1982 to 551 per judgeship, ranking this district seventh nationwide. Despite this, the pending caseload was only reduced 3.4 percent. The case backlog remains above the national average at 440 per judgeship.

This district's two authorized judgeships consist of one judgeship authorized exclusively for the Western District of Arkansas and two "roving" judgeships which are authorized for both the Eastern and Western Districts. Historically, these two roving judges spend the vast majority of their time in the Eastern District. The one full-time judge, therefore, carries a much heavier workload than the statistics indicate.

In view of this situation, and realizing that this district cannot continue to rely on so much help from visiting judges, a temporary judgeship is necessary to assist with the growing filings and the reduction of the pending caseload.

U.S. DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

Number of Judgeships Currently Authorized: 17
Number of Additional Judgeships Recommended: 4

Filings in this district have risen steadily since 1976. During the year ended June 30, 1982, 7,690 new cases were filed, a 2.9 percent increase over 1981. Filings per judgeship are 452, while weighted filings per judgeship are significantly higher at 494. This indicates that this court receives a more difficult mix of cases than the average district. Fifteen percent of the civil cases filed in 1982 involve civil right actions, antitrust cases or copyright, patents and trademark cases, all of which demand a great deal of judge time.

Six visiting judges and eight senior judges contributed to the 3.7 percent rise in terminations. The pending caseload, however, increased 4.8 percent, continuing its steady growth since 1979. This is due, in part, to the 107.4 vacant judgeship months this district has experienced over the last three years. This is equivalent to an average of three vacant authorized judgeships for each year. As a result, the workload for the sitting judges has been much higher than the per judgeship statistics indicate.

The complex nature of the workload is illustrated by the fact that 43 trials lasted 10 or more days, with nine of those running from 20 to 60 days. This further drains available judge power.

Based on current workload statistics, it is apparent that the Central District of California needs additional judgeships. It cannot continue to rely on large contributions from its senior judges and from visiting judges. The 1980 workload levels justified two additional judgeships recommended by the Judicial Conference in 1980 and approved by the Senate Judiciary Committee in September 1982. The addition of those two now would not even bring the 1982 per judgeship workload down to the 1980 levels. Four additional judgeships would only reduce total filings to 366 per judgeship and weighted filings to 400 per judgeship. These judgeships are needed to adequately dispose of the court's expanding caseload.

U.S. DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

Number of Judgeships Currently Authorized: 5
Number of Additional Judgeships Recommended: 1

During the year ended June 30, 1982, filings rose 22.9 percent to 566 per judgeship. Since 1980, when the Judicial Conference first recommended an additional judgeship for this district, filings have risen 43.0 percent. The District of Connecticut also has the seventh highest weighted caseload in the nation, with 560 weighted filings per judgeship compared to the national average of 417.

With the help of two senior judges, this district's termination rate is above the national average. Despite this, the pending caseload grew to 810 per judgeship in 1982, fourth highest among the 94 district courts. The number of civil cases pending over three years has grown steadily and now comprises 15.1 percent of the total pending civil caseload. The heavy caseload has caused the median times from filing to disposition in criminal cases (6.7 months) and from issue to trial in civil cases (34 months) to be well above the national average.

A sixth judgeship would redistribute the workload as follows:

472 filings per judgeship
467 weighted filings per judgeship
675 cases pending per judgeship

Even with the additional judgeship, the workload levels will be higher than those of 1980 which formed the basis for the Senate Judiciary Committee's approval of one additional judgeship in September 1982.

The rapid rise in this court's workload and the huge backlog of cases gives strong continuing support to this district's need for one additional judgeship to dispose of its cases in a timely manner.

U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

Number of Judgeships Currently Authorized: 12
Number of Additional Judgeships Recommended: 3

Filings in the Southern District of Florida have declined rapidly since 1978, primarily due to a large reduction in land condemnation cases. In 1982, filings numbered 401 per judgeship and weighted filings numbered 386 per judgeship. The once extremely large backlog of cases has been further reduced from 729 per judgeship in 1981 to 553 per judgeship in 1982 due, in large part, to the assignment of nine visiting judges to this court for a total of 254 days.

In 1980, the Judicial Conference recommended the addition of one permanent and one temporary judgeship to address the volume of new filings, and to prevent an increase in the overwhelming backlog of cases. The Senate Judiciary Committee, in September 1982, agreed with the Judicial Conference recommendation, and also recommended a second temporary judgeship. In recommending the second temporary, the Committee cited the enhanced federal law enforcement efforts of the special task force headed by the Vice President. The present workload statistics of this court justify the authorization of one additional judgeship.

Two additional judgeships are needed to provide assistance to reduce the backlog of cases and absorb the impact of the enhanced law enforcement efforts. If the special task force accomplishes its objectives, and the anticipated new criminal workload is to be processed without delay, a total of three additional judgeships will be required for this court.

U.S. DISTRICT COURT FOR THE MIDDLE DISTRICT OF GEORGIA

Number of Judgeships Currently Authorized: 2
Number of Additional Judgeships Recommended: 1

Total filings rose 27.3 percent to 639 per judgeship in 1982, ranking this district eighth among the 94 district courts. The district's weighted filings also ranked among the nation's highest (5th) at 604 per judgeship. Terminations dropped slightly, but remained well above the national average at 480 per judgeship. Despite this high level of productivity, the pending caseload rose 44.8 percent from 355 per judgeship in 1981 to 514 per judgeship in 1982. The median times for disposing of civil and criminal cases also increased in this district. In 1982, it took an average of 4.2 months to dispose of a criminal case, compared to 2.8 months in 1981. Similarly, it took an average of seven months to dispose of a civil case in 1982, compared to six months in 1981.

This district, with only two authorized judgeships, is more seriously affected by vacancies, illness, or protracted trials than larger courts would be. In addition, the one senior judge of this court is over 80 years of age and no longer contributes to the work of the court. Workload levels in the court are substantially above the levels of 1980 which justified the additional judgeship recommended by the Judicial Conference in 1980, and approved by the Senate Judiciary Committee in September 1982.

With the authorization of a third judgeship, total filings would drop to 426 per judgeship and weighted filings would drop to 403 per judgeship. This court needs an additional judgeship because of its growing backlog of cases and its continually increasing volume of new filings.

U.S. DISTRICT COURT FOR THE DISTRICT OF HAWAII

Number of Judgeships Currently Authorized: 2
Number of Additional Judgeships Recommended: 1

New filings rose 8.3 percent to 354 per judgeship in 1982. Weighted filings were significantly higher at 407 per judgeship, indicating that Hawaii receives a more difficult mix of cases than the average court. The pending caseload is high, primarily due to the 30.5 vacant judgeship months this district has experienced over the last four years. The workload statistics, therefore, underestimate the burden that the judges of this court have faced since 1979. With the help of 11 visiting judges sitting for 192 days in 1982, this court was able to reduce its backlog slightly; however, it remains high at 531 per judgeship. The number of civil cases over three years old accounts for 13.4 percent of all pending civil cases, almost double the national average of 7.0 percent.

The median time from issue to trial in civil cases rose from 16 months in 1981 to 27 months in 1982. The median time for disposing of a civil case and a criminal case are 17 months and 5.7 months, respectively. All three processing times are well above the national average.

The workload levels of this court, especially the pending caseload and weighted filings, are approximately the same as in 1980 when the Judicial Conference first recommended an additional judgeship. That recommendation was also approved by the Senate Judiciary Committee in September 1982. A third judgeship would reduce the number of cases pending to a manageable 354 per judgeship. Since it is unreasonable to assume Hawaii will always receive so much help from visiting judges, the court needs one additional judgeship to lower the processing times for disposing of cases. It will also enable the court to reduce its pending caseload - particularly the number of three-year-old civil cases.

U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

Number of Judgeships Currently Authorized: 16
Number of Additional Judgeships Recommended: 3 permanent plus 1 temporary

Continuing a five year increasing trend, filings rose 10.6 percent to 8,299 or 519 per judgeship in 1982. The weighted caseload is significantly higher at 639 per judgeship, third highest among the 94 district courts. The large difference between actual filings and weighted filings is due to this district's complex mix of cases. A large percentage of the caseload consists of antitrust suits, civil rights actions, and trademark cases, all of which are very time-consuming cases.

The termination rate is above the national average at 467 per judgeship. Despite this, the backlog of cases grew more than 12 percent to 478 per judgeship, the largest it has ever been. The increase in pending cases is partially due to the number of vacant judgeship months (30.2) this district experienced during 1982. This is the equivalent of 2.5 judgeships. In addition, 27 trials lasted 10 or more days, further draining this district's judicial resources.

Workload levels in this district have risen substantially since 1980 when the Judicial Conference and Senate Judiciary Committee recognized the need for two additional judgeships in this district. The addition now of only two judgeships would not even bring per judgeship workload down to 1980 levels. Four additional judgeships, three permanent and one temporary, have been recommended by the Judicial Conference. With the addition of four judgeships, filings per judgeship would drop to 415 and weighted filings per judgeship would drop to 511. The pending caseload would be reduced to 382 per judgeship. The large volume of cases, including many complex cases, that this district receives demands three permanent judgeships. One temporary judgeship is required to assist in reducing the pending caseload.

U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS

Number of Judgeships Currently Authorized: 2
Number of Additional Judgeships Recommended: 1

This district ranks fifth among all district courts in the number of filings per judgeship (670) and tenth in the number of weighted filings per judgeship (543). This court has maintained an excellent termination rate for the second year in a row at 601 cases per judgeship, third highest nationwide. The number of trials completed is also high at 56 per judgeship. Despite the court's effort, the pending caseload continued its three year climb reaching 652 per judgeship. Because of the heavy workload, the median disposition time for criminal cases increased from 2.8 months in 1981 to 4.9 months in 1982 and the median disposition time for civil cases remains above the national average at 11 months.

The present workload is at a much higher level than in 1980 when the Judicial Conference recommended an additional judgeship. The Senate Judiciary Committee also recognized the need for an additional judgeship on this court in September 1982.

A third judgeship would reduce filings per judgeship and weighted filings per judgeship to 447 and 362, respectively. The crunch of pending cases would be eased to 434 per judgeship. The volume of the Southern District of Illinois' workload justifies the authorization of one additional judgeship.

U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF INDIANA

Number of Judgeships Currently Authorized: 4
Number of Additional Judgeships Recommended: 1 temporary

Filings in the Northern District of Indiana jumped almost 30 percent to 536 per judgeship in 1982. Since 1977, filings have almost doubled. The weighted caseload is substantially lower at 407 per judgeship, indicating a mix of cases that is less difficult than average. This is primarily due to the more than 700 cases filed involving the U.S. government's attempts to recover defaulted student loans or overpayments of VA educational benefits. These cases require very little judge time, and as a result, are weighted very low in the weighted filings system.

The court has one senior judge whose help contributed to an increase in terminations; however, terminations have not kept pace with filings. As a result, the pending caseload increased 28.8 percent to an all-time high of 614 per judgeship. This is due, in part, to the number of vacant judgeship months (37.2 over the last three years) this district has experienced.

The current workload levels are significantly higher than those of 1980, which were the basis for the Judicial Conference and Senate Judiciary Committee's approval of one temporary judgeship for this district.

A temporary judgeship would give the court five judgeships, reducing filings per judgeship to 429 and weighted filings per judgeship to 326. More importantly, the number of cases pending would drop to 491 per judgeship.

This district needs a temporary judgeship to meet the demands of its rising backlog.

U.S. DISTRICT COURT FOR THE WESTERN DISTRICT OF KENTUCKY

Number of Judgeships Currently Authorized: 3.5
Number of Additional Judgeships Recommended: 1

Total filings rose slightly from 443 per judgeship in 1981 to 455 per judgeship in 1982. Weighted filings were virtually the same at 442 per judgeship. Terminations have remained steady since 1979; therefore, with filings outdistancing terminations, the pending caseload has grown 38.5 percent over the last four years. During 1982, the pending caseload rose 13.2 percent to 532 per judgeship. The median disposition time for criminal cases is 3.5 months, third best among all district courts. Conversely, the median disposition time for civil cases is 11 months, well above the national average.

Since this district shares a "roving" judgeship with the Eastern District of Kentucky, the workload statistics are based on 3.5 judgeships. This judge, however, spends the vast majority of the time in the Eastern District. Therefore, the workload statistics slightly underestimate the burden the Western District's judges face. Even without this consideration, the per judgeship workload levels are excessive.

The authorization of an additional judgeship would lower the number of filings to a much more manageable 354 per judgeship. The number of cases pending would drop to 414 per judgeship. An additional judgeship would also give the court an opportunity to slow down or reverse the growth of its pending caseload.

U.S. DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA

Number of Judgeships Currently Authorized: 5
Number of Additional Judgeships Recommended: 1

This district's filings have increased steadily over the past several years. Overall filings during 1982 were 29 percent greater than in 1981 and 85.9 percent above 1977 levels. The 602 total filings per judgeship were well above the national average of 444. The majority of this rise has occurred as a result of civil cases filed in two major categories with low case weights: recovery of overpayments and enforcement of judgments and contract cases. Consequently, the weighted caseload was much lower than raw filings workload at 425 weighted filings per judgeship. Though the case mix is less complicated than average, the high volume of cases makes the workload in this district difficult to manage without accumulating a backlog. There are six places of holding court in this district, and the fact that the five active judges all live in different locations complicates the disposition of cases.

The district's 510 terminations per judgeship are much higher than the national average of 409, but despite this, the number of pending cases continues to increase. Two senior judges provided a great deal of assistance in terminating cases but their help cannot be expected to continue at such high levels. The sheer volume of cases in this district and a high weighted caseload justify an additional judgeship.

U.S. DISTIRCT COURT FOR MARYLAND

Number of Judgeships Currently Authorized: 9
Number of Additional Judgeships Recommended: 1

During the past six years case filings have increased at a steady rate in this district court. The 4,052 filings in 1982 are 52.7 percent higher than the number filed in 1977. On a per judgeship basis this court's workload has grown from 379 cases for each of the seven judgeships in 1977 to 450 cases for each of nine judgeships in 1982. Weighted filings were lower in 1982 at 382 per judgeship. Despite vacancies in the past four years the number of cases terminated by the court has also increased each year. Terminations, however, have not kept pace with filings and consequently a sizeable backlog is developing. This backlog includes 202 civil cases which have been pending over 3 years.

The combination of vacancies and a heavy caseload, including a substantial number of criminal cases, has had an impact on processing times. The median time to process a criminal case from filing to disposition was 5.8 months in 1982 compared to a national average of 4.9 months. The processing time for a civil case was 8 months - one month greater than the national figure.

Trials, especially long trials, consume the judicial resources of a court. Maryland consistently has several long trials each year. In 1982 three of the longest trials in this district lasted 27 days each. With a number of long trials the effective judgepower of a district is reduced substantially. In this district in 1982 the equivalent of at least one full judgeship was devoted to the trial of only 15 cases.

The District Court for Maryland requires one additional judgeship to handle the growing caseload and tackle the backlog without lowering the quality of justice dispensed by this court. The additional judgeship would also ease the continuing burden of lengthy trials in this court.

U.S. DISTRICT COURT FOR MASSACHUSETTS

Number of Judgeships Currently Authorized: 10
Number of Additional Judgeships Recommended: 1 permanent and 1 temporary

The District reported 4,372 new case filings in 1982, up 10.5 percent from the 3,956 cases filed in 1981. Terminations per judgeship were among the highest in the nation, ranking 22nd out of 94 courts. Almost 900 cases terminated were Interstate Commerce Commission (ICC) cases which had been pending in this court for many years. As a result of these terminations the number of civil cases pending over three years dropped to 867 cases, or only 14.7 percent of the pending civil caseload. This is in great contrast to the 1981 figure of 1,673 cases and 26.3 percent of the pending civil caseload.

This court has a complex mix of case types as shown by the significant difference between raw and weighted case filings. In 1982 there were 437 cases filed per judgeship with weighted filings higher at 475 per judgeship. The new filings included a large number of civil rights cases and copyright, patents and trademark cases which are more complex and time-consuming that the average case.

Much of the pending caseload, too, is made up of complex cases including civil rights actions and personal injury suits involving Johns Manville. The district ranks 12th in the nation with 620 pending cases per judgeship. After termination of the bulk of the ICC cases, the pending caseload, like the new case filings, is made up of a large number of complex and time-consuming cases.

Due to the size and complexity of the caseload in this district, one additional judgeship is needed. In addition, one temporary judgeship is required to assist in reducing the substantial backlog.

U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

Number of Judgeships Currently Authorized: 13
Number of Additional Judgeships Recommended: 2

The number of cases filed in this district rose 13.8 percent from 5,825 cases in 1981 to 6,627 cases in 1982. This resulted in 510 filings and 517 weighted filings per judgeship. Terminations were high at 449 per judgeship. Nevertheless, a court of this size cannot handle the incoming workload without additional judgeships.

In 1977 the district's pending caseload was 4,582 cases; by 1982 it had grown to 5,905 cases, an increase of 28.9 percent. There are several things that can cause a backlog to grow including judgeship vacancies and long trials. This district has consistently had many long trials each year. Judges of this district presided over 16 of the longest trials completed nationwide in 1982. One contract dispute trial alone lasted 68 days. Another 37 trials ranged in length from 10 to 19 days each.

Workload levels in this court have risen dramatically since 1980, especially the weighted filings which grew by nearly 30 percent. With one additional judgeship the 1982 weighted filings per judgeship would still be 480 which is nearly 20 percent above the workload level which was the basis for the Senate Judiciary Committee's approval of one additional judgeship in September 1982.

In order to meet the demands of a rising caseload and handle a large number of lengthly trials this court now requires the services of two additional judgeships.

U.S. DISTRICT COURT FOR MINNESOTA

Number of Judgeships Currently Authorized: 6, including 1 temporary
Number of Additional Judgeships Recommended: 1 temporary judgeship made permanent

Minnesota's caseload increased 87.2 percent in 1982 due to an unusually large number of suits (1,424 cases) brought to recover the overpayments of veterans benefits and defaulted student loans. Excluding these cases, however, there was still an 11.7 percent increase in filings over 1981 and a 39.8 percent increase over 1977's caseload.

The district currently has six authorized judgeships including one temporary position which will expire with the first vacancy occurring after November 8, 1983. If we exclude the 1,424 recovery suits which require little judge time, each judge has a manageable caseload of 351 filings and 401 pending cases. Without the temporary judgeship, however, the picture changes. Per judgeship filings would rise to 421 and the pending caseload would become 482 cases per judgeship. Weighted filings would grow from 502 to 602 per judgeship.

At this time Minnesota has a low number of civil cases pending over three years (77 cases, 3.4 percent of the civil backlog) and the second most efficient processing time for civil cases in the nation. The median time from filing to disposition of civil cases in Minnesota in 1982 was 4 months. This compares favorably with the national average of 7 months.

If the temporary judgeship position is allowed to lapse we can expect an immediate increase in the pending caseload and the processing time for all cases.

The Judicial Conference has recommended that the temporary judgeship position be converted to a permanent position. The growing caseload, especially the weighted caseload, supports this recommendation for a full complement of 6 permanent judgeships for Minnesota.

U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF MISSISSIPPI

Number of Judgeships Currently Authorized: 2
Number of Additional Judgeships Recommended: 1

There were 596 cases filed per judgeship in the Northern District of Mississippi in 1982. This translates into 582 weighted filings per judgeship, the sixth highest total in the nation. Despite this extremely high workload, the court has been very conscientious in keeping its dockets current. In 1982, the court terminated 526 cases per judgeship, the 12th best record among all the 94 courts. In addition, the two judges completed 71 trials each - the third highest average nationwide in 1982. The median times from filing to disposition of civil and criminal cases were 7 and 4.3 months, respectively, compared to national averages of 7 and 4.9 months. All this was accomplished without the help of senior or visiting judges.

In spite of the judges' efforts in increasing terminations (which have increased consistently every year since 1977), the rise in filings has led to an increase in the pending caseload. Mississippi, Northern's pending caseload of 493 per judgeship is well above the national average of 427.

In a small district like this, where there are only two judgeships, the workload is even more burdensome on each judge because any vacancy, illness, or protracted trial affects the court more dramatically than a similar occurence would affect a larger court.

All current workload levels are significantly higher than in 1980 when the Judicial Conference first recommended an additional judgeship for this district. On the basis of that same 1980 workload data, the Senate Judiciary Committee approved one additional judgeship in September 1982. The addition of one more judgeship would bring the court's per judgeship caseload down to 397 filings, 388 weighted filings, and 329 pending cases. Given the high volume of its caseload, the Northern District of Mississippi requires an additional judgeship. The court needs this additional assistance to continue its excellent record of terminations and to halt the increase in its pending caseload.

U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

Number of Judgeships Currently Authorized: 3
Number of Additional Judgeships Recommended: 2

Filings in the Southern District of Mississippi were approximately 600 per authorized judgeship in both 1980 and 1981. By 1982 there were 671 filings per judgeship, placing the district fourth among all 94 districts nationwide. This translates into 676 weighted filings per judgeship, the highest among all district courts. The district has a high termination rate (510 cases per judgeship), but that has not been sufficient to offset its extremely large volume of incoming cases. The pending caseload continues to grow and is now the second largest in the nation at 883 per judgeship.

Mississippi, Southern's caseload is complex as well as voluminous because of a large number of civil rights cases and personal injury product liability cases. Most of the latter are asbestos related cases filed by workers exposed to asbestos in shipyards located within the district.

In 1980, the Judicial Conference recommended one additional judgeship for this district. The Senate Judiciary Committee approved the request in September 1982. Since that time, the caseload has grown to be even more burdensome. In just two years the pending caseload has increased by 44 percent, primarily because of the large number of new filings and their complexity.

Because of this, the district now requires two additional judgeships to handle this overwhelming caseload. Two more judgeships would bring the 1982 filing level to 403 cases, 406 weighted filings, and the pending caseload to 530 per judgeship.

U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI

Number of Judgeships Currently Authorized: 5
Number of Additional Judgeships Recommended: 1

In 1982, per judgeship filings in the Eastern District of Missouri reached 495, with weighted filings substantially higher at 539. This difference reflects the presence of many complex cases including civil rights actions, personal injury product liability cases, and certain labor litigation. Up until this year, the district had managed to terminate almost as many cases as were filed. The cumulative effect of always being a little behind, and the dramatic increase of 24 percent in filings in 1982, has caused a large increase (31.3 percent) in the pending caseload in 1982. Missouri, Eastern's median times from filing to disposition of both civil and criminal cases are among the best in the country, and the number of civil cases which are over three years old represents only 1.9 percent of the pending civil caseload.

In 1980, the Judicial Conference recommended one additional judgeship for the district primarily on the basis of the level of weighted filings. The Senate Judiciary Committee approved the recommendation in September 1982. Since that time, weighted filings have grown by more than 33 percent and the pending caseload has increased by 41 percent.

With a sixth judgeship, the caseload figures would drop to 413 filings, 449 weighted filings, and 309 pending cases per judgeship. Due to the volume and complexity of the caseload, the Eastern District of Missouri requires an additional judgeship.

U.S. DISTRICT COURT FOR THE DISTRICT OF MONTANA

Number of Judgeships Currently Authorized: 2
Number of Additional Judgeships Recommended: 1

Filings have risen steadily in the District of Montana over the last five years. In 1982, filings totaled 456 per authorized judgeship and weighted filings had increased to 402 per judgeship. Terminations were up 16 percent to 407 per judgeship, leaving a pending caseload of 465 per judgeship on June 30, 1982. The percentage of the district's three-year-old civil cases is low at 4.6 percent compared to the national average of 7.0 percent, but the court's nine month median time from filing to disposition of civil cases is much slower than the national average of seven months. The ever-increasing caseload has resulted in a median time for criminal cases of 4.9 months in 1982, equal to the national average. The district had been faster than the national average in four of the previous five years.

A small district such as this, with only two judgeships, is affected more dramatically by any illness, vacancy, or protracted trial than similar occurrences would affect larger courts. In addition, the two judges of this court cover an extremely large area since the court has jurisdiction over the entire state.

Because of the current workload levels, an additional judgeship is required for this district. A third judgeship would bring Montana's 1982 caseload down to 304 filings, 268 weighted filings, and 310 pending cases per judgeship.

U.S. DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

Number of Judgeships Currently Authorized: 11
Number of Additional Judgeships Recommended: 3

Although case filings in the District of New Jersey leveled off in 1982 to 423 per judgeship, the weighted caseload increased to 480 per judgeship. The difference between the weighted and raw figures is a measure of the complexity of the district's workload; New Jersey has a large number of civil rights case filings and asbestos-related personal injury cases. A complex caseload often results in a large number of lengthy trials. In 1982, there were six trials in this district which required more than 20 days with one Extortion, Racketeering, and Threats jury trial lasting 88 days. Altogether, there were 27 trials in 1982 that lasted ten or more days and monopolized the services of approximately two judges.

Despite the problems of a more complex caseload, the district has been able to terminate as many cases as the average court with the help of three senior judges. New Jersey terminated 404 cases per judgeship in 1982; the national average was 409. It has managed to keep its pending caseload low at 326 per judgeship, well below the national average of 427.

In 1980, the Judicial Conference recommended two additional judgeships for this district, and in September 1982, the Senate Judiciary Committee agreed that two were required based on 1980 workload levels. Since that time, the workload has grown to even higher levels. Due to the nature of the cases, the level of filings, and the length of trials, and despite the high productivity rate of the sitting judges, New Jersy requires three additional judgeships to dispose of its cases in a timely manner. The addition of three judgeships would decrease the court's workload to 333 filings, 377 weighted filings, and 256 pending cases.

U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF NEW YORK

Number of Judgeships Currently Authorized: 3
Number of Additional Judgeships Recommended: 1

For the fifth consecutive year, there was a substantial increase in case filings in the Northern District of New York, primarily in civil rights cases and state prisoner petitions. Total filngs are now 522 per judgeship (up 18 percent from 1981). Weighted filings, however, are up 30 percent to 496 per judgeship in 1982, the 19th highest among the 94 districts. The effects of one vacancy in 1981 can be seen in the district's pending caseload. The vacancy was partially offset by help from visiting judges, but case filings far surpassed terminations. The district's 1982 pending caseload of 724 per judgeship ranks 7th in the nation. A substantial 11.8 percent of the civil backlog is made up of cases over three years old.

New York, Northern requires one additional judgeship based on the volume and growing complexity of its case filings. Another factor in support of increased judgeship strength is the amount of time which must be spent by the judges in traveling to the five places of holding court (particularly in the winter).

The heavy caseload in this district, particularly the weighted filings and the pending caseload, require one additional judgeship. The addition of this position would reduce per judgeship filings to a level which would allow the judges to make some progress in cutting the substantial backlog. The 1982 workload figures redistributed among four judgeships would be 391 filings, 372 weighted filings, and 543 pending cases.

U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

Number of Judgeships Currently Authorized: 10
Number of Additional Judgeships Recommended: 2

Case filings in the Eastern District of New York rose to 449 per judgeship in 1982; weighted filings were higher at 470 per judgeship. With fewer vacant judgeship months and the help of two senior judges and several visiting judges, the district has increased its termination rate over last year by 15 percent to 415 cases per judgeship. The number of terminations was still not sufficient to keep pace with the number of incoming cases. The pending caseload is now the 18th largest among the 94 courts at 563 cases per judgeship. This situation has not been helped by a number of vacancies on the court in recent years; vacancies totaled the equivalent of just over one judge in 1980, two judges in 1981, and slightly less than one judge (vacant 10.3 months) in 1982. As of December 31, 1982, there were again two vacancies: one judge took senior status in May and another was elevated to the Court of Appeals in June.

New York, Eastern's complex caseload is reflected in the number of long trials reported each year. In 1982, there were seven trials which lasted 20 days or more. The district has a heavy criminal caseload with 45 criminal filings for each judgeship in 1982 with nearly two criminal defendants per case.

In 1980, the Judicial Conference recommended one additional judgeship for this district. Since that time, filings in this district have increased 15 percent, weighted filings 22 percent, and the pending caseload has increased by 26 percent.

Two additional judgeships are now required for the Eastern District of New York to handle the current level of incoming filings, devote the time required of its strenuous criminal caseload, and to prevent a continuation of the buildup in its backlog. A total of twelve judgeships would bring its 1982 caseload down to 374 filings, 392 weighted filings, and 469 pending cases per judgeship.

U.S. DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK

Number of Judgeships Currently Authorized: 3
Number of Additional Judgeships Recommended: 1 temporary

After a 13 percent increase in cases filed in 1981, total filings in the Western District of New York leveled off at 454 per judgeship in 1982. Weighted filings increased by 8 percent, but were still substantially less at 406 per judgeship, indicating a less complex than average mix of cases. Much of the caseload is made up of cases involving the U.S. government's efforts to recover defaulted student loans, and prisoner petitions - all of which require less involvement by judges than the average case. On the other hand, this district reports several protracted trials each year. Such trials leave the three active judges little time for reducing the backlog - which grew to 628 cases per judgeship last year, the 11th highest in the nation. There are currently no senior judges to assist with this backlog.

In 1980, the Judicial Conference recommended that one temporary judgeship be created to assist the court with the large backlog and numerous cases, such as those involving Hooker Chemical Corporation, which were expected to require an inordinate amount of judicial resources. This situation has only gotten worse. The large backlog and lengthy trials still demand that a temporary judgeship should be created in this district. The fourth judgeship would reduce the pending caseload to 471 cases per judgeship and decrease the impact that long trials can have on a court with only three judges.

U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA

Number of Judgeships Currently Authorized: 3
Number of Additional Judgeships Recommended: 1 temporary

During 1982, total filings in the Eastern District of North Carolina increased by 42 percent to 719 per judgeship, the highest total in the nation. Weighted filings were much lower, however, at 423 because of the large number of low weighted recovery of overpayment cases and prisoner petitions. The latter accounted for 34 percent of the civil filings in 1982. With a less complex mix of cases than average, and the help of visiting judges, this court managed 607 terminations per judgeship in 1982, the second highest among the 94 courts. Again, a large part of the terminations were U.S. contract and prisoner petitions. Despite the record number of terminations, the backlog of pending cases reached 506 per judgeship in 1982.

The district's backlog has increased, in part, because of a large number of vacant judgeship months in a court with only three authorized judgeships. The court did not have available the equivalent of two-thirds of a judge in 1979, just under two judges in 1980, and one judge in 1981 and again in 1982. In spite of North Carolina, Eastern's high productivity rate, the tremendous increase in filings and the increased backlog necessitate the addition of a temporary judgeship to deal with this workload and allow the district to continue to process cases expeditiously. This judgeship was first recommended by the Judicial Conference in 1980, and approved in September 1982 by the Senate Judiciary Committee on the basis of 1980 workload levels, which were substantially below current levels.

U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO

Number of Judgeships Currently Authorized: 10
Number of Additional Judgeships Recommended: 1 temporary plus
1 temporary made permanent

Total filings in the Northern District of Ohio increased by 6 percent in 1982 to 402 per judgeship, while weighted filings increased to 437. This indicates that this district has a more complex mix of cases than average: 15 percent of its civil cases in 1982 were civil rights suits, and 21 antitrust cases were also filed. These cases require substantial amounts of judge time and receive heavier than average weights. Over the last four years, the district experienced almost 79 months of judgeship vacancies. Ohio, Northern has received some senior and visiting judge help, but it has not come close to compensating for the vacancies. The court's termination record has suffered as a result of this. The workload situation is further complicated by several lengthy trials each year; in 1982, one antitrust jury trial lasted for 70 days.

The Omnibus Judgeship Act of 1978 authorized one permanent and one temporary judgeship for Ohio, Northern. In 1980, the Judicial Conference recommended that the temporary judgeship be converted to a permanent judgeship position because the workload clearly exceeded what nine judges could handle if the temporary position were to expire. With nine judgeships, filings would be 446 and weighted filings would be 486 per judgeship. Since that time, filings have grown by 22 percent, weighted filings by 24 percent, and the pending caseload has increased by 44 percent. The workload has now reached a level requiring more than the conversion of the temporary. One additional temporary is required in order to prevent a continuation of the increase in pending cases and to compensate for the loss of judgepower due to vacancies. With eleven judgeships, the 1982 pending caseload would drop to a more manageable level of 448 per judgeship.

U.S. DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

Number of Judgeships Currently Authorized: 3 2/3
Number of Additional Judgeships Recommended: 1

After a slight drop in 1980, case filings have risen substantially in the Western District of Oklahoma. In 1982, filings numbered 597 per judgeship. Weighted filings were even greater at 669 per judgeship, indicating a complex mix of cases. Among new case filings were many real property diversity actions and personal injury product liability cases which require considerable judgetime. There has also been a substantial increase in the number of criminal fraud case filings. This has resulted in a weighted filings level which ranks second among all district courts. Despite the heavy workload, terminations per judgeship ranked 9th and median times for both civil and criminal cases were among the lowest in the nation. This was achieved with almost no help from senior or visiting judges.

Both the Judicial Conference and the Senate Judiciary Committee recommended an additional judgeship for this court on the basis of its 1980 workload. Since 1980 the caseload has grown and the district is in even greater need of the additional judgeship.

The addition of one judgeship would reduce the per judgeship workload figures to 469 filings, 526 weighted filings, and 295 pending cases. Considering the current workload levels one additional judgeship is required.

U.S. DISTRICT COURT FOR RHODE ISLAND

Number of Judgeships Currently Authorized: 2
Number of Additional Judgeships Recommended: 1

The District of Rhode Island's total filings rose 12 percent during 1982 to 479 per judgeship. Weighted filings per judgeship were even higher at 511, indicating a complex mix of cases. Terminations rose by 44 percent, but still did not keep pace with filings. Consequently, the pending caseload rose to 703 cases per judgeship. The two judges completed an average of 43 trials each in 1982. The 1980 workload levels caused the Judicial Conference and the Senate Judiciary Committee to approve one additional judgeship for this court. This district is now in even more need of an additional judgeship.

The median times from filing to disposition of both criminal and civil cases are very high: 7.0 and 19 months respectively, compared to national averages of 4.9 and 7 months. Rhode Island requires one additional judgeship to handle its level of filings and bring down its processing times. Given the current small size of the court, the workload is even more burdensome than in larger district courts because any vacancy, illness, recusal, or protracted trial affects this court more dramatically than larger courts. An additional judgeship would bring this court's 1982 workload to 319 filings, 341 weighted filings, and 469 pending cases.

U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE

Number of Judgeships Currently Authorized: 3
Number of Additional Judgeships Recommended: 1

Case filings in the Eastern District of Tennessee rose 18 percent in 1982 to 629 per judgeship. Weighted filings, while lower at 552 per judgeship, are still very heavy, the 8th largest weighted caseload in the nation. Two-thirds of the rise in filings was caused by an increase in U.S. contract cases involving the federal government's attempts to collect delinquent student loans and recover overpayments of veteran's benefits. These cases are weighted less than average and are one reason for the substantial difference between raw and weighted filings. The median time from filing to disposition is the second best in the nation for civil cases and the fifth best for criminal cases. Terminations per judgeship are the fifth highest in the country despite the extensive amount of traveling the judges are required to do to serve the four divisions in the district.

The statistics do not show two events which have occurred since June 30, 1982. One of the District's three judges took senior status in August 1982 and another died in the following month. The district currently has only one active judge and he is over 80 years of age. These facts alone do not justify an additional permanent judgeship, but they will certainly affect the court's backlog in the next few years. As of June 30, 1982 the district had no civil cases pending over 3 years, unlike the average district with 7 percent of its civil backlog pending over three years. This is, however, unlikely to continue given the current situation.

The Eastern district of Tennessee requires one additional judgeship to handle its extremely large caseload. This fourth judgeship will bring the District's 1982 caseload down to 472 filings, 414 weighted filings, and 220 pending cases per judgeship.

U.S. DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE

Number of Judgeships Currently Authorized: 3
Number of Additional Judgeships Recommended: 1

Case filings rose 14 percent in 1982 to 526 per judgeship in the Western District of Tennessee; weighted filings also rose substantially to 517 per judgeship. The criminal caseload is the fourth highest in the nation at 102 filings per judgeship. Over half of the criminal workload consists of fraud cases which require a considerable amount of judgetime. Terminations increased 27 percent, but this was not sufficient to completely offset the increase in filings, so pending cases rose by 12 percent. At 512 pending cases per judgeship, the backlog is the 26th highest among the 94 districts. This district consistently has a large number of trials completed per judgeship. Even though the majority of trials lasted only one to three days, 65 trials completed per judgeship consumes a significant amount of judicial resources each year.

At the present time the court has one vacancy which, without some assistance from visiting judges, may result in a further buildup of the already high backlog. In addition, the court has only one senior judge, who is over 80 years old and no longer contributes to the work of the court. This situation will contribute to an increasing backlog over the next few years and will affect this court more than a similar occurence would in a court with more judges.

Because of the high level of filings and weighted filings, the Western District of Tennessee requires one additional judgeship. This fourth judgeship would reduce the 1982 per judgeship caseload to 395 filings, 388 weighted filings, and 384 pending cases.

U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS

Number of Judgeships Currently Authorized: 4
Number of Additional Judgeships Recommended: 2

Filings in the Eastern District of Texas rose by 26 percent in 1982 to 644 per judgeship, the seventh highest total in the nation. Weighted filings are roughly equal at 637, the fourth highest figure among the 94 courts. Although terminations per judgeship are much higher than average (474 in this district, and 409 nationwide), they still don't equal the extremely high filing rate. Pending cases stand at 831 per judgeship, the third highest backlog in the nation. The court has no senior judges available for assistance and received almost no help from visiting judges in 1982.

The Eastern District has an enviable record in speed of disposition of those civil cases which go to trial. Its median time from issue to trial of civil cases stands at 10 months, the 11th best in the country. The four judges have completed an average of 63 trials in each of the last two years, the 12th highest among the 94 districts in 1982. All civil cases taken together (including those which didn't go to trial) have lagged behind, however. The median time from filing to disposition was 14 months in 1982; the national figure is seven months.

In 1980 the district's workload was high enough to support a recommendation for one additional judgeship by the Judicial Conference and the Senate Judiciary Committee. Since that time filings and weighted filings have increased by more than 33 percent and the pending caseload has grown by 28 percent. Texas, Eastern now requires two additional judgeships to handle its massive caseload. A total of six judgeships would bring the 1982 workload down to 429 filings, 425 weighted filings, and 554 pending cases - still a large caseload.

U.S. DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

Number of Judgeships Currently Authorized: 6
Number of Additional Judgeships Recommended: 1

The Western District of Texas experienced an increase of almost 12 percent in filings during 1982. Filings reached 446 per judgeship, weighted filings were roughly equal at 439. In recent years terminations have been lower than average because of vacancies on the court. As a result the pending caseload has increased to 456 per judgeship. Vacancies cost the equivalent of 2.4 judges in 1980, 1.3 judges in 1981, and 0.4 judges in 1982.

The court has a very high criminal caseload of 97 cases per judgeship, the 5th largest in the country. Over one-quarter of these cases in 1982 were immigration cases. In addition to a caseload reflecting the district's proximity to Mexico, the court has the geographical problems which exist in any district with such a substantial land mass. Texas, Western is the 2nd largest district in the country behind Alaska and has seven divisional offices to be served by six active judges. Distances between divisional offices run as high as 700 miles which complicates travel to and from court locations.

The judges of this court also completed 64 trials each during 1982. This was high compared to 42 trials completed per judgeship nationwide and ranked 10th among all the courts.

The Western District of Texas requires an additional judgeship because of its large caseload and geographical circumstances. A seventh judgeship would reduce the court's 1982 caseload to 382 filings, 376 weighted filings and 391 pending cases.

U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

Number of Judgeships Currently Authorized: 8
Number of Additional Judgeships Recommended: 1

In 1982 there were 482 filings and 458 weighted filings per judgeship in the Eastern District of Virginia. With considerable help from its three senior judges the court terminated more cases than were filed in 1982. In addition, 64 trials were completed per judgeship, ranking 10th in the nation. Not only were case terminations high and trials completed high, but processing times were among the best recorded in 1982. Ranking first in the nation with the median time of 5 months from issue to trial of civil cases, the district was also expeditious in terminating criminal cases in a median time of 3.9 months from filing to disposition and civil cases in 5 months. These processing times are excellent - especially in light of the 11.6 months of judicial vacancies in 1982.

The end result of the efficient operation of this court, aided by dedicated senior judges, is an impressively low pending caseload which is an enviable 279 cases per judgeship.

While new filings in this court dropped by comparison with both 1980 and 1981, weighted filings, a measure of the complexity of the caseload, rose. The current level of 458 weighted filings per judgeship is substantially higher than the 1980 level which was the basis for the one additional judgeship approved by the Senate Judiciary Committee in September 1982.

The court has requested and the Judicial Conference has recommended an additional judgeship. The additional judgeship strength will enable the court to handle its heavy caseload without relying so heavily on its senior judges who cannot continue to carry such a large burden.

U.S. DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON

Number of Judgeships Currently Authorized: 5
Number of Additional Judgeships Recommended: 1 permanent plus 1 temporary

The Western District of Washington had 525 new case filings and a weighted caseload of 441 cases per judgeship in 1982. These workload indicators were much higher than the national averages of 444 filings and 417 weighted filings per judgeship and substantially above the levels of 1980 which served as the basis for the Senate Judiciary Committee's approval of one permanent and one temporary judgeship in September 1982. With all vacancies filled the number of case terminations per judgeship ranked 17th in the nation at 496 per judgeship. Despite termination rates (per judgeship) that were higher than the national averages for the last three years, the pending caseload continues to grow. There were 553 pending cases per judgeship in 1982, more than 100 cases greater than the national average of 427 judgeship.

Processing times for civil cases were longer than average with a median time of 9 months from case filing to disposition and 20 months from issue to trial. In addition, the number of civil cases pending more than 3 years has grown to its highest level ever and represents 11.6 percent of the district's backlog.

This district requires one additional judgeship to handle its heavy incoming workload and reverse the trend of a growing backlog. Further, one temporary judgeship is needed to reduce the large backlog of pending cases.

U.S. DISTRICT COURT FOR WYOMING

Number of Judgeships Currently Authorized: 1
Number of Additional Judgeships Recommended: 1

This one-judgeship court recorded 561 new cases filings and 517 weighted filings in 1982, clearly a larger caseload than one judge can handle. These workload levels are also substantially higher than in 1980 which served as the basis when the Senate Judiciary Committee approved one additional judgeship for the district in September 1982. With substantial help from its one senior judge the court terminated 517 cases and completed 81 trials in 1982. The majority of these trials lasted between 1 and 3 days.

Processing times were among the most efficient in 1982 with median times from filing to disposition of 4.4 months for criminal cases and 5 months for civil cases. The median time from issue to trial of civil cases was 10 months - ranking the court 11th in the nation.

The district has one of the lowest per judgeship pending caseloads in the nation due to the long hours put in by the one active and one senior judge. The senior judge is now 83 years of age and the court cannot expect his services to continue at the same high level as in the past.

In order for this court to handle the heavy caseload and prevent a buildup of a backlog, this district requires an additional judgeship.

SEPARATE VIEWS OF SENATOR ROBERT DOLE

I take this opportunity to state my views on the Thurmond/Heflin bill which the Committee approved in executive session on March 22, 1983.

As members of the Committee are aware, I sponsored legislation which would have assigned bankruptcy cases to the presently sitting Article III district courts, thus ensuring one, unified, Constitutional forum for the consideration of all bankruptcy matters. The Thurmond/Heflin approach adopted by the Committee opts for Article I bankruptcy judges, relies heavily on the consent of parties to jurisdiction, and dissembles the cornerstone of the 1978 Bankruptcy Reform Act which placed all matters related to a bankruptcy case within the jurisdiction of the bankruptcy court.

I still believe that assignment of all bankruptcy matters to one forum is the most efficient way to resolve the constitutional problems thrust upon the system by the Supreme Court Decision in *Northern Pipeline*. Nevertheless, I am fully aware of the practical and political problems connected with passage of S. 443, and I defer to the decision of the Committee in approving the Thurmond/Heflin proposal. I will support the Thurmond/Heflin bill on the floor of the Senate as I believe it to be of the utmost importance that Congress act on some legislation in the near future which will resolve the uncertainties surrounding bankruptcy case administration under the interim rule promulgated by the Judicial Conference.

ROBERT DOLE.

MINORITY VIEWS OF SENATOR JOHN P. EAST

THE BANKRUPTCY COURT AND FEDERAL JUDGESHIP ACT OF 1983

I welcome this effort by the Committee on the Judiciary to resolve the problems presented by the decision of the Supreme Court in *Northern Pipeline Co.* v. *Marathon Pipe Line Co.*, —— U.S. ——, 73 L. Ed. 2d 598, 644 (1982). Unfortunately, the Committee has chosen this important legislation as a vehicle for including a provision to increase the number of Federal judges in response to the alleged backlog of non-bankrutpcy litigation in Federal courts. Except for that provision, I would have voted for this bill.

Before discussing my objections to increasing the number of Article III federal judges, I should remark that the unfortunate decision of the Supreme Court in *Northern Pipeline* precipitated the current crisis in the bankruptcy courts. Even though Congress has been roundly criticized for its deliberative pace in responding to *Northern Pipeline,* I remind my colleagues that we in Congress are being held accountable for a mess that the Supreme Court could have avoided if it had accepted Justice White's recommendation of deference to congressional judgment in the *Northern Pipeline* case. After all, members of Congress, like Justices of the Supreme Court, are sworn to uphold the Constitution, and after due deliberation, a majority of Congress decided five years ago that the 1978 Act was constitutional.

WHY CREATE MORE FEDERAL JUDGESHIPS?

"Creating more courts is like building more highways: it simply encourages traffic." So observed Professor A. E. Dick Howard of the University of Virginia Law School, in a widely acclaimed article on the mounting problem of excessive litigation that recently appeared in The Wilson Quarterly (Summer, 1981). Parkinson's law, it would appear, applies not only to administrative agencies, but also to our court system. Like bureaucrats, judges tend to make work for themselves. Indeed, there seems to be a direct correlation between Congress' continuing authorization for more federal judges and the spectacular rise in the number of cases in the federal judiciary.

Between 1975 and 1982, Congress increased the number of federal judges by 33 percent, adding almost 150 more federal judges to the growing judiciary. At the same time, the number of cases rose by 75 percent.

In my judgment, it is difficult to avoid the unfortunate conclusion that the well-intentioned efforts of Congress to rescue the courts from their unmanageable caseloads are actually worsening the situation and that the current backlog of cases plaguing our

system of justice is directly attributable to repeated authorization for more Federal judges.

THE GROWTH OF LITIGATION IN SOCIETY

Professor Howard's article offers this perspective on the growth of litigation in our society:

> There are now more than 574,000 lawyers in America, twice as many as there were just 20 years ago. Law school enrollments have gone up 187 percent in the same period. Already we have one lawyer for every 400 people (compared to one doctor for every 500), or three times as many lawyers per capita as England and 20 times as many as Japan.
>
> "We may well be on our way to being overrun by hordes of lawyers, hungry as locusts, and brigades of judges in numbers never before contemplated," Chief Justice Warren Burger observed not long ago. In 1960, the country's federal district court judges faced about 59,000 civil cases; in 1980, the number was 185 percent higher—over 168,000. During the same two decades, the number of cases taken to the federal appellate courts jumped from 3,899 to 23,200—an increase of 495 percent.

This growth of litigation in our society is an unhealthy phenomenon. The more our citizens are invited to resolve their disputes through the legalistic formalities and procedures of the courts, the less likely they are to rely on the informal methods of cooperation within their community. Instead of encouraging citizens to compromise, the trend toward litigating disputes through the rigid rules of courts invites controversy over the smallest of matters.

SEPARATION OF POWERS CONCERNS

The legislative urge to create more and more Federal judges also produces a more powerful judiciary which is ever eager to take control of more and more public issues normally reserved to elected representatives. In this respect, beneficence of Congress is not only self-defeating, but also eventually self-destructive.

Our Constitution envisages a government in which primary policy-making responsibilities are entrusted to elected representatives who are responsibe to the values and will of the people. Alexander Hamilton, in the Federalist No. 78, described the proper roles of our three branches of government in these words:

> The executive not only dispenses the honors but holds the sword of the community. The legislature not only commands the purse but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or the wealth of the society and can take no active resolution whatever. It may truly be said to have neither force nor will but merely judgment . . .

How far our system of government has already shifted from this balance of power and interest is abundantly clear. As we create more Federal courts and provide them with more opportunities to impose their will on larger numbers of persons who are being drawn into federal courts, we will see the federal courts far exceeding the modest role that Hamilton envisioned for the judicial branch.

Instead of government by elected representatives who are responsive to the values and will of the people, we will see a government increasingly dominated by an unelected, appointed elite of Federal judges who hold office for life tenure and are therefore effectively unaccountable to the American people. As Professor Howard has observed:

> Our increasing reliance on law and litigation to resolve conflicts has far-reaching implications. The more we litigate and the more judges intervene in our affairs, the more our shared values and elective political processes are undermined. As Justice Felix Frankfurter wrote in warning of the "inherently oligarchical powers" of judicial review, "Such an assertion of judicial power deflects responsibility from those on whom in a democratic society it ultimately rests—the people."
>
> Courts that make rules for universities, prisons, welfare agencies, or other bodies take on the functions of legislatures. But courts are afflicted with a kind of tunnel vision. A judge is not in a position—nor does he have the warrant—to balance competing political and economic interests as legislators are accustomed to doing. Yet he can order heavy expenditures of public funds to carry out his decisions, and that means either that taxpayers will pay more or that other public projects will get less.

JUDICIAL REFORMS WILL EASE THE WORKLOAD OF THE FEDERAL COURTS

The increasing problem of the backlog of Federal cases is, in my judgment, directly related to judicial activism and usurpation of power by Federal judges. Congress should respond to this problem not by increasing the size of Federal judiciary (in effect a reward for improper conduct), but by limiting the powers of Federal judges. That kind of reform would solve the caseload problem, while at the same time eliminating the need for the high expense and burden of more judges. What America needs is not more judges, with more power, but fewer judges with less power.

CONCLUSION

For the foregoing reasons, I urge my colleagues to reject this legislation as unwise and unnecessary.

JOHN P. EAST.

○